MOLTZ | MORTON | O'TOOLE LLP

Janessa M. Glenn
(512) 439-2174
jglenn@mmotlaw.com

The Littlefield Building
106 East 6th Street, Suite 700
Austin, TX 78701
(512) 439-2170
Facsimile (512) 439-2165

September 24, 2009

Ms. LaDonna Castañuela
Office of Chief Clerk, MC-105
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, TX 78753

Via Hand Delivery

Clerk of the Court
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Via Hand Delivery

RE: Application by IESI for a New Type 1 MSW Permit; Proposed Permit No. 2332;
SOAH Docket No. 582-08-1804
TCEQ Docket No. 2007-1302-MSW

Dear Sir/Madam:

Enclosed for filing in the referenced cause is IESI TX Landfill L.P.'s Exceptions and Proposed Revisions to Amended Proposal for Decision.

Please file mark the enclosed copy of the cover page and return it to the courier.

Very truly yours,

Janessa M. Glenn

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 SEP 24 PM 4:20
CHIEF CLERKS OFFICE

JMG/ac
Enclosures
cc: Marisa Perales (w/encl.)
Scott Humphrey (w/encl.)
Anthony Tatu (w/encl.)
Kerry Russell (w/encl.)

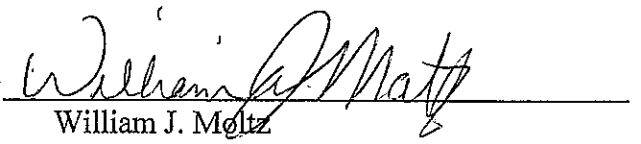
SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW

APPLICATION OF IESI TX LANDFILL	§	**BEFORE THE STATE OFFICE**
	§	
L.P. FOR A NEW TYPE 1 MSW PERMIT	§	**OF**
	§	
PROPOSED PERMIT NO. 2332	§	**ADMINISTRATIVE HEARINGS**

IESI TX LANDFILL L.P.'S EXCEPTIONS AND PROPOSED REVISIONS TO AMENDED PROPOSAL FOR DECISION

Respectfully submitted,

MOLTZ MORTON O'TOOLE, LLP
106 East 6th Street, Suite 700
Austin, Texas 78701
Telephone: (512) 439-2170
Facsimile: (512) 439-2165

By: 

William J. Moltz
State Bar No. 14259400
Janessa C. Glenn
State Bar No. 50511631

Attorneys for Applicant
IESI TX LANDFILL, L.P.

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TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

IESI TX LANDFILL, LP, ("IESI" or "Applicant") the Applicant in this Proceeding for a Texas Commission on Environmental Quality ("TCEQ") permit to develop and operate a Type I municipal solid waste landfill in Jack County, Texas in cooperation with the City of Jacksboro (the "Jacksboro Landfill" or the "Landfill"), respectfully submits these Exceptions to the honorable Administrative Law Judge's ("ALJ's") Amended Proposal for Decision ("Amended PFD") issued on September 4, 2009.

I. INTRODUCTION

The ALJ issued her original PFD in May, 2009 and subsequently issued an Amended PFD on September 4, 2009 in response to the exceptions, replies and *amicus curiae* briefs filed by the parties and interested associations. In comparing the original PFD to the Amended PFD, IESI has identified two key determinations that have been reversed: (1) the Amended PFD recognizes that the Application does indeed adequately identify and address springs; and (2) the Amended PFD recommends approval of the permit with the addition of a Special Provision requiring the installation of additional groundwater monitoring wells as offered by the Applicant. The Amended PFD also includes other clarifications, additional discussion and analysis of the record evidence, and revised proposed findings of fact ("FOF") and conclusions of law ("COL"). The Applicant's specific exceptions to the ALJ's proposed FOF/COL, as well as a draft final Order incorporating the Applicant's suggested revisions, are separately attached to these Exceptions.

IESI agrees with the Amended PFD to the extent it finds that she suggested Special Provision which requires an additional 28 groundwater monitor wells encircling the Jacksboro Landfill will, without a doubt, address any and all groundwater issues raised by opponents of the

Jacksboro Landfill. With the addition of these monitor wells, the Jacksboro Landfill will be one of the most, if not the most, monitored landfills in the State. Although IESI believes the additional monitor wells are not necessary based on our professional analysis and the technical review of agency staff, the Applicant does not oppose the installation of the additional monitor wells and renews its commitment to adhere to any such Special Provision.

However, because the Amended PFD continues to assert that the Application was not "adequate" in certain limited respects, IESI files these Exceptions to the Amended PFD. In order to not burden the record with redundant filings, IESI will not reiterate every issue discussed in its previously filed Exceptions but, instead, incorporates herein by reference those Exceptions as previously filed on June 1, 2009.

II. SUMMARY

IESI's Application for the Jacksboro Landfill was declared by the TCEQ Executive Director to be Administratively and Technically Complete several years ago. That declaration included a determination that the Application contained adequate information for the agency to conduct a thorough review and analysis of compliance with the TCEQ's municipal solid waste regulations. The record in this case clearly shows that IESI carried its burden of proof on every applicable design and operating requirement contained in those regulations. In fact, the ALJ found that the Applicant properly conducted its site-specific subsurface investigation, properly characterized the groundwater depth and flow at the site, applied proper data to surface water modeling, met the specific design and operating requirements contained within the regulations, and met its burden on virtually every issue referred by the Commissioners.

The Amended PFD finds fault with the Application largely on academic grounds because: (1) IESI purportedly did not use "published sources" to identify water wells within one mile of the proposed facility's boundaries (even though the published source the ALJ cites does

not establish the actual existence of additional wells within one mile of the permit boundary); (2) IESI did not identify the base of the "lowermost" aquifer capable of producing usable groundwater in the area as a result of the purported failure to identify all water wells (even though what the ALJ calls the lowermost aquifer was clearly proven to be an aquiclude beneath the Landfill site as described in the Application); and (3) IESI did not describe all groundwater recharge areas within five miles of the site (even though the applicable regulatory requirement applies only to the recharge of "regional" aquifers and the ALJ found that the aquifer at issue is not a regional aquifer). Although the ALJ no longer expressly recommends a finding that the Applicant "did not submit a complete permit application" (which finding would impermissibly contradict an irrevocable determination previously made by the Executive Director under TEX. HEALTH & SAFETY CODE § 361.068(b)), the Amended PFD continues to criticize the Applicant's purported failure to include documentation in the original Application. This criticism of the Application is compounded by the ALJ's refusal to allow either the Applicant or the City of Jacksboro, both prior to and during the evidentiary hearing, to supplement the Application to address some of the protestant's (and apparently also the ALJ's own) confusion about documentation in the original Application.[1] Most importantly, adding the supplementary information the ALJ contends should have been included in the original Application would not necessitate any change to the final design, construction or operation of the proposed Landfill because of the thorough site-specific subsurface investigation and characterization of groundwater depth and flow beneath the Landfill site itself, which was fully reviewed and approved by the agency's Executive Director.

[1] Both the City of Jacksboro and the Applicant attempted to add clarifying language to the Application to address the concerns originally raised by the Protestants with respect to the non-regional aquifer at issue. The Protestant repeatedly opposed these attempts, and the ALJ ruled in favor of the Protestant. A more detailed discussion of these attempts can be found in IESI's Exceptions to the original PFD, which discussion is adopted herein by reference.

The Amended PFD ultimately concludes that the permit should be granted because the Applicant has agreed to a Special Provision requiring IESI to install additional monitor wells as part of the groundwater monitoring system. While the Applicant does not believe the Special Provision is necessary for environmental protectiveness, and the permit should be granted without the Special Provision as supported by the record evidence, IESI has nevertheless agreed to the Special Provision should the Commissioners deem it prudent. Also, despite our Exceptions to the Amended PFD, the Applicant appreciates the ALJ's dedication to this matter as expressed by her willingness to reconsider the issues thoroughly briefed by the parties and interested persons in response to the original PFD.

III. EXCEPTIONS TO AMENDED PROPOSAL FOR DECISION

Although the Amended PFD recommends granting a permit for the Jacksboro Landfill with the inclusion of a Special Provision, the Applicant excepts to the Amended PFD in those instances where the ALJ finds IESI did not "adequately" address certain issues. Those exceptions are outlined below.

In addition, "Attachment A" to these Exceptions identifies, by number, the individual Proposed Findings of Fact and Conclusions of Law objected to, and provides additional clarifying findings on certain topics. Also included in Attachment A is a comprehensive draft Order for the Commission's convenience in adopting proper Findings of Fact and Conclusions of Law.

A. The Applicant property identified and evaluated nearby wells and springs.

1. Water Wells

The Applicant excepts to Proposed Findings of Fact Nos. 124 through 130 concerning identification and evaluation of water wells and springs. The Commission should adopt instead those Findings of Fact proposed by the Applicant, specifically FOF Nos. 204 through 207 in the

attached Order. In addition to the discussion below, Attachment A identifies the individual exceptions to those Findings of Fact.

The TCEQ referred the following issue to SOAH: Whether the "application adequately identified and evaluated all ... water wells...." What is or is not "adequate" obviously must be determined in light of the TCEQ's regulations, policies, and precedent which were adopted after extensive consideration and public comment and which are the ultimate guide to which the Applicant and TCEQ must look. The Application identified water wells within 500 feet of the proposed site and within 1 mile of the permit boundary, as required by TCEQ rules at 30 TEX. ADMIN. CODE § 330.53(b)(8)(E) and § 330.56(d)(4)(J).[2] The Amended PFD acknowledges that these wells were identified by both conducting a search within applicable regulatory agency records and an "on the ground" visual check for evidence of active water wells.

Michael Snyder, a licensed geologist, former senior geologist for the Solid Waste Program for the Texas Department of Health (a predecessor division of the Texas Water Commission), and an experienced expert in hydrogeology, oversaw the water well search.[3] The Application properly identifies the located water wells in accordance with agency rules.[4] The applicable TCEQ rules require a search of the ***available public records*** ("published and open file sources", 30 TEX. ADMIN. CODE §330.56(d)(4)), and Mr. Snyder did just that, plus went beyond the requirement of the rule in conducting an on-the-ground "windshield" survey and consulting commercially available sources. This combination of reviewing available commercial and public

[2] App. Ex. 100 Vol. 1, Part II, p. II-12; Appen. IID, Figure IID.1; Vol. 2, Attach. 4, Appen. 4A., Figure 4A.5; Vol. 2, Part III, Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5; *see also* App. Ex. 1, Welch Direct Testimony at p. 26/lines 11 - 15; App. Ex. 13, Worrall Direct Testimony at p. 11/lines 11 – 20.

[3] App. Ex. 7, Snyder Direct Testimony at p. 8/line 14 – p. 9/line 5; Transcript Vol. 2, p. 33/lines 1-16, Snyder Cross Examination; App. Ex. 100 Vol. 1 Part II, p. II-12; App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5.

[4] App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5.

records and personally observing those well sites visible from nearby roadways establishes that Mr. Snyder exercised the proper standard of care to locate water wells in the area.[5]

Dr. Charles Kreitler, expert geologist and hydrogeologist, testified that the Applicant's evaluation and identification of water wells complies with applicable TCEQ requirements.[6] Mr. John Worrall, a land use planning expert, testified that this identification fulfills the water well identification requirements of the applicable TCEQ rules addressing land use issues found at 30 TEX. ADMIN. CODE § 330.53(b)(8)(E).[7] Gale Baker, on behalf of the Executive Director of the TCEQ, testified that the well search conducted by Mr. Snyder was adequate and that the Applicant met its burden of proof.[8] The record clearly indicates that the Executive Director believed the information presented was adequate when the staff did its technical review, determined that the Application was Technically Complete, and issued a Draft Permit. The Executive Director's witnesses confirmed their positions under oath at the hearing, and after the close of all the evidence the Executive Director filed closing briefs again verifying the adequacy of the Applicant's water well search. Despite this overwhelming evidence, the Amended PFD finds that IESI did not conduct an adequate search of water wells.

In the original PFD, the ALJ based her findings largely upon the testimony of protestant's witness Dr. Lauren Ross, who is not a geologist and in fact has worked on only one landfill – in Paris, Texas in 1984 – in her entire career.[9] Dr. Ross included as part of her direct testimony a "chart" allegedly listing various water wells in the area that were not identified in the

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[5] App. Ex. 7, Snyder Direct Testimony at p. 8/line 14 through p. 9/line 5; Transcript Vol. 2, p. 33/lines 1-16, Snyder Cross Examination; App. Ex. 100 Vol. 1 Part II, p. II-12.

[6] App. Ex. 9, Kreitler Direct Testimony at p. 8/line 4 – p. 10/line 2.

[7] App. Ex. 13, Worrall Direct Testimony at p. 11/lines 11 – 20.

[8] Transcript Vol. 7, p. 28/line 17 – p. 29/line 2.

[9] Transcript Vol. 6, p. 93/line 23 through p. 94/line 10, Ross Cross Examination.

Application.[10] This chart was prepared by an individual member of the Protestant group, who in turn relied on information presumably told to her by others.[11] The people who allegedly have at least some degree of personal knowledge of the information contained on the chart did not testify at the hearing. This information is both legally inadmissible as factual evidence and inherently unreliable.[12] In fact, when the issue of the admissibility of this unreliable hearsay information was raised during the hearing, Two Bush made it clear that the questionable information contained on Dr. Ross' chart was not being offered into the record for the purpose of showing the "facts" purportedly shown on the chart.[13] Instead, it was merely indicative of the type of information reviewed by Dr. Ross when formulating various opinions. As a matter of law and good technical practice, the questionable information should not and can not be relied on to actually establish anything definitive about water wells in the proposed Findings of Fact and Conclusions of Law.

The original PFD was also strongly critical of the water well search because Mr. Snyder did not enter onto people's property, at risk of his personal safety, to gather unreliable information about the source of water for nearby residents. The Applicant and the City of Jacksboro, with the full support of the Executive Director, contend that an Applicant satisfies its burden of proof by conducting a search of the public records of the State of Texas and further by

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[10] Protestant Ex. 8G.

[11] Transcript Vol. 6, p. 120/line 21 – p. 121/line 13 Ross Cross Examination.

[12] The Protestants would also require that an applicant identify water wells not just within 1 mile of the permit boundary, but within 1 mile of the property boundary – in this case all of the approximately 652 acres IESI owns, including the driveway leading to main part of the property. (Transcript Vol. 6, p. 122/line 19 – p. 123/line 8; p. 124, lines 11-14, Ross Cross Examination). The applicable TCEQ rule requires identification of the aquifers for the water wells within one mile of the "property boundaries of the facility." 30 TEX. ADMIN. CODE § 330.56(d)(4)(J). Interpreting this TCEQ provision to mean within 1 mile of all the property owned by the Applicant is nonsensical. For any given landfill application, the amount of property the applicant owns will vary greatly, and may far exceed the actual facility boundaries or may not. Accordingly, the property boundary is not a relevant starting point. To the extent the PFD purports to adopt this standard, it is completely unworkable, and the Applicant would urge the TCEQ to make clear that this is not the standard of care.

[13] Transcript Vol. 6, p. 92/line 23 – p. 93/line 10.

doing a visual reconnaissance along public roads in the area. Were there any valid reasons to vary from this long established procedure, the Executive Director would certainly have requested additional information (although such additional information would probably not be obtained by gathering door-to-door hearsay statements in any case). There is good reason the TCEQ does not urge or even condone the gathering of data in the manner espoused by the Protestants and apparently by the ALJ in this case. Not only is such an approach potentially dangerous to the well being of those attempting to collect such data, it adds nothing credible to the design or analysis of the landfill while, at the same time, adds unreliability and generates data that, as a matter of law and good technical practice, is hearsay and not suitable to be used to determine any facts. The great majority of people whose wells are not properly registered with the State likely have no idea of the well completion details, let alone the geologic characteristics of the formations encountered during drilling. That is not to say, however, that they would be unwilling to hazard an uneducated and probably biased guess. Additionally, any representative from a landfill project is not likely to get a warm reception when he or she shows up to question neighbors about their water supply. Even if residents actually know any specific details of their well's subsurface characteristics, they would have little motivation to provide accurate information to the landfill representative. This idea of having an Applicant go door-to-door is so troubling that *amicus curiae* briefs were filed in this matter by Lone Star Chapter of the National Solid Waste Association ("NSWMA") and the Texas Solid Waste Association of North America ("TxSWANA") strongly urging the Commission to affirmatively reject any such requirement. IESI agrees with those concerns expressed in those *amicus curiae* briefs and incorporates those briefs by reference herein.

Perhaps recognizing the difficulty, danger, and futility of knocking on doors, the ALJ suggested in both the original and the Amended Proposal for Decision that the Applicant could

Applicant's expert was and is very familiar with Report 308 and it simply does not support that assertion.

Apparently, the ALJ assumes, based on generalized and disingenuous assertions made by Protestant, that Report 308 shows additional wells within one mile of the Jacksboro Landfill. The evidence, however, clearly shows otherwise. If one merely takes the well map from Report 308[17] (the map on which Protestant relies and which is the apparent basis of the ALJ's assertion), and overlays the Jacksboro Landfill location, as also shown in record evidence as part of the Application,[18] it is obvious that this published source actually contains **fewer** wells within one mile of the facility boundary than those identified by the Applicant in that area. Specifically, Report 308 identifies two wells within one mile of the facility boundary while the Application shows these same two wells plus five additional wells. This is clearly shown by comparing Figure 1 to these Exceptions to Figure 2 to these Exceptions. Figure 1 is the well map directly from Report 308 with the Jacksboro Landfill location overlain. Figure 2 is Exhibit 4A.5 from the Application. It is simply not accurate to say that Report 308 identifies additional wells within one mile of the facility boundary or that this "published" source (e.g. Report 308) should have led the Applicant to identify more wells in the relevant area.

Certainly, Report 308 identifies additional wells in Jack and adjacent Counties located more than one mile from the facility boundary. The number and identification of wells in all of Jack and adjacent Counties, however, is not required to be stated under TCEQ rules. Despite the Protestant's assertion (apparently relied on by the ALJ), there is no published source included or discussed in the record evidence in this case, including Report 308, that identifies additional wells within one mile of the permit boundary that are not already indicated in the Application

[17] Protestant Ex. 8B, Figure 31

[18] Applicant's Ex. 100, Vol. 2, Exhibit 4A.5.

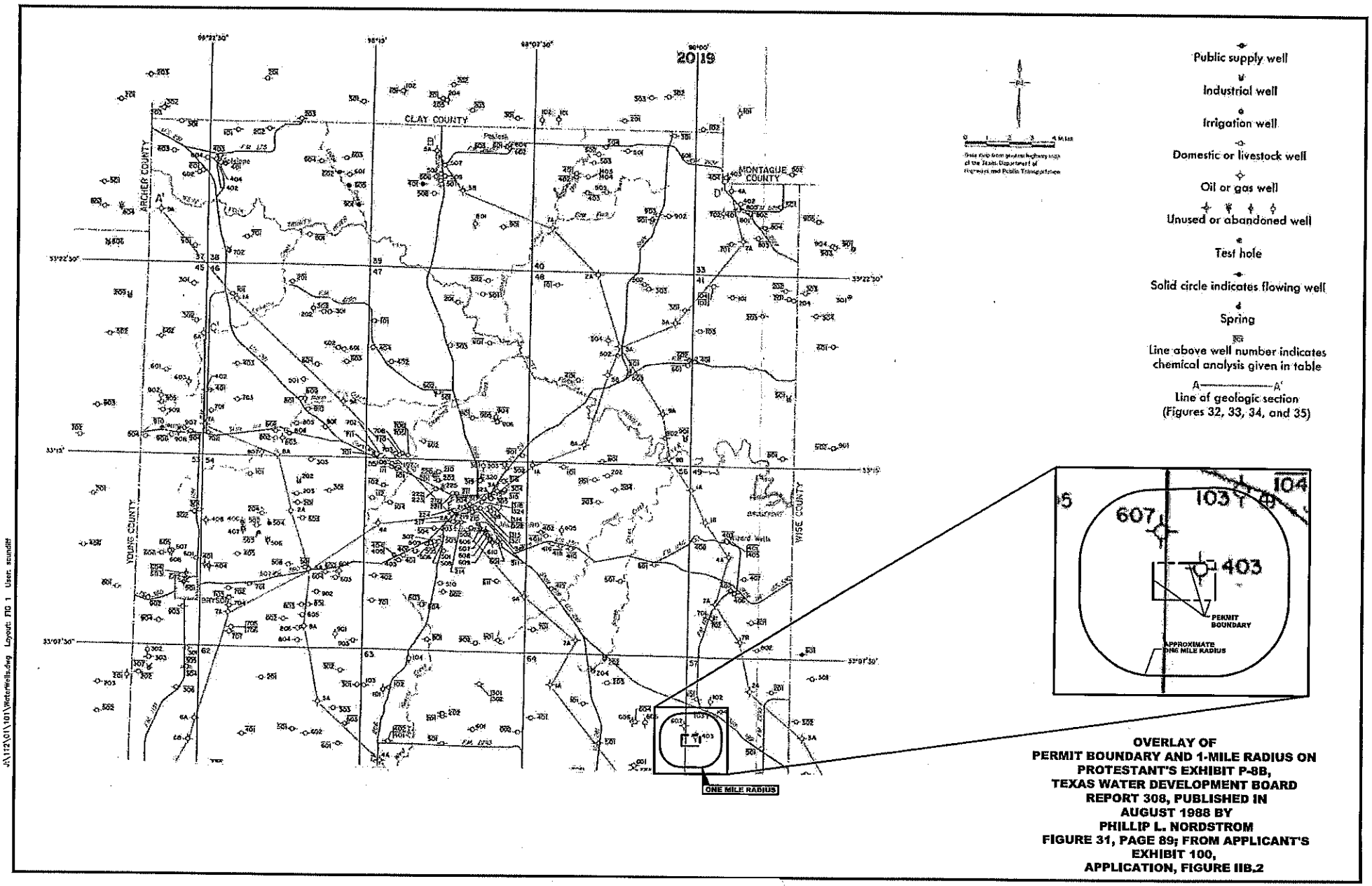
CLAY COUNTY
ARCHER COUNTY
MONTAGUE COUNTY
YOUNG COUNTY
WISE COUNTY
20
19
Public supply well
Industrial well
Irrigation well
Domestic or livestock well
Oil or gas well
Unused or abandoned well
Test hole
Solid circle indicates flowing well
Spring
Line above well number indicates chemical analysis given in table
A——A'
Line of geologic section (Figures 32, 33, 34, and 35)
607
103
104
403
PERMIT BOUNDARY
APPROXIMATE ONE MILE RADIUS
ONE MILE RADIUS
OVERLAY OF
PERMIT BOUNDARY AND 1-MILE RADIUS ON
PROTESTANT'S EXHIBIT P-8B,
TEXAS WATER DEVELOPMENT BOARD
REPORT 308, PUBLISHED IN
AUGUST 1988 BY
PHILLIP L. NORDSTROM
FIGURE 31, PAGE 89; FROM APPLICANT'S
EXHIBIT 100,
APPLICATION, FIGURE IIB.2

FIGURE 1

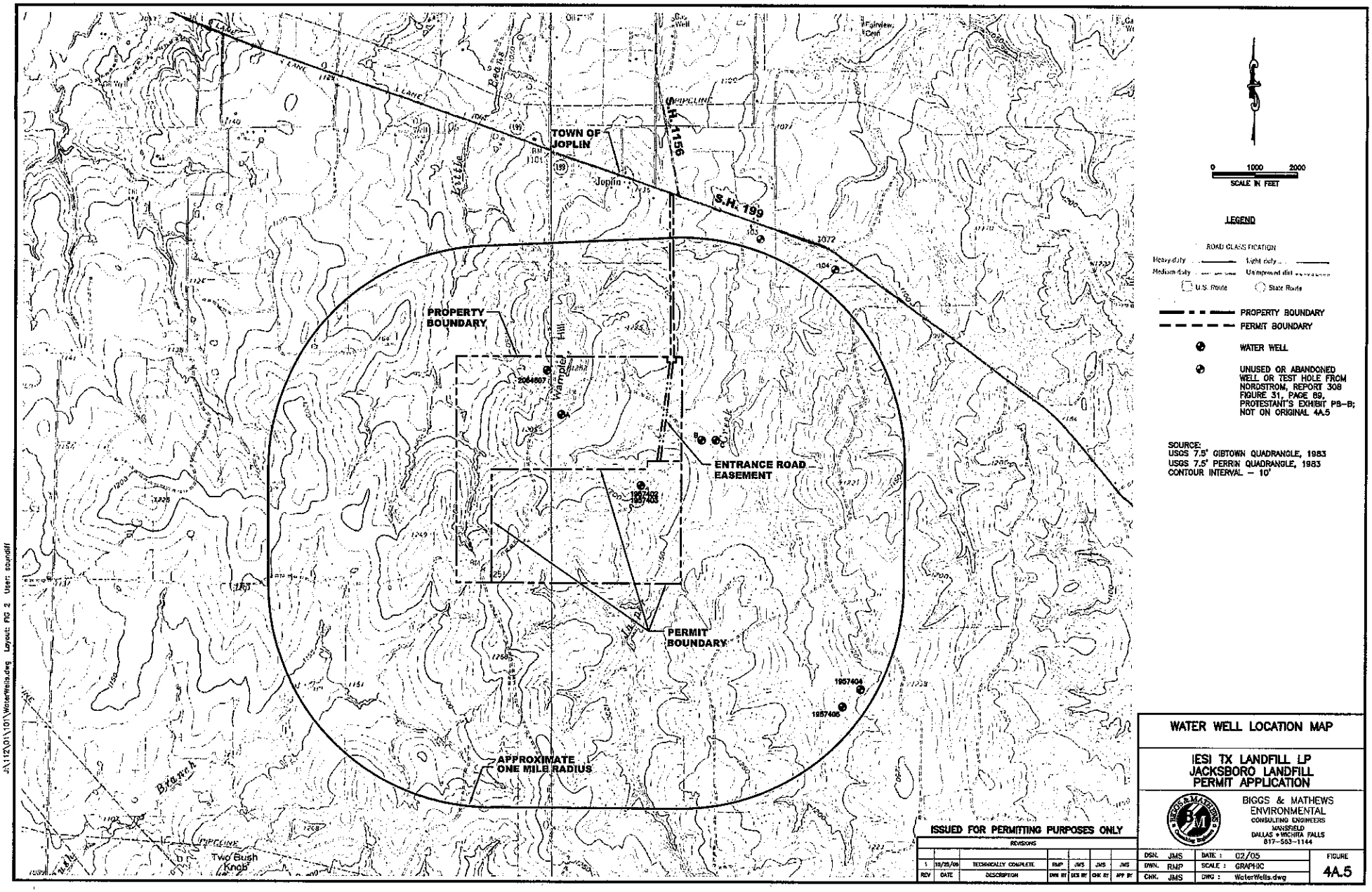
TOWN OF JOPLIN
Joplin
S.H. 199
F.M. 1156
PROPERTY BOUNDARY
PERMIT BOUNDARY
ENTRANCE ROAD EASEMENT
APPROXIMATE ONE MILE RADIUS
2064607
1957402
1957403
1957404
1957406
Two Bush Knob
PIPELINE
0 1000 2000
SCALE IN FEET
LEGEND
ROAD CLASSIFICATION
Heavy-duty
Light duty
Medium-duty
Unimproved dirt
U.S. Route
State Route
PROPERTY BOUNDARY
PERMIT BOUNDARY
WATER WELL
UNUSED OR ABANDONED WELL OR TEST HOLE FROM NORDSTROM, REPORT 308 FIGURE 31, PAGE 89, PROTESTANT'S EXHIBIT PB-B; NOT ON ORIGINAL 4A.5
SOURCE:
USGS 7.5' GIBTOWN QUADRANGLE, 1983
USGS 7.5' PERRIN QUADRANGLE, 1983
CONTOUR INTERVAL = 10'
ISSUED FOR PERMITTING PURPOSES ONLY
REVISIONS
1 10/25/05 TECHNICALLY COMPLETE RMP JMS JMS JMS
REV DATE DESCRIPTION DWN BY DES BY CHK BY APP BY
WATER WELL LOCATION MAP
IESI TX LANDFILL LP
JACKSBORO LANDFILL
PERMIT APPLICATION
BIGGS & MATHEWS ENVIRONMENTAL
CONSULTING ENGINEERS
MANSFIELD
DALLAS • WICHITA FALLS
817-563-1144
DSN. JMS DATE : 02/05
DWN. RMP SCALE : GRAPHIC
CHK. JMS DWG : WaterWells.dwg
FIGURE 4A.5

FIGURE 2

and that existed at the time the Application was declared Administratively and Technically Complete by the TCEQ. The Applicant conducted a thorough search of the published sources, as required by the applicable TCEQ rule. The methods used by the Applicant here are those relied upon in the industry for years, approved by the TCEQ staff and the Executive Director, and were certainly adequate.

Based on the faulty assumption that the well search was not adequate, the Amended PFD goes onto say that the monitoring system proposed in the Application will not be adequate. The Amended PFD goes on to assert that is because there is only one monitoring well proposed at the west side of the Landfill and one on the south side. But the site-specific characterization of the Landfill shown in the Application - which the ALJ agrees was proper – establishes that the monitoring wells located to the west and south of the Landfill are ***upgradient*** from the Landfill. Those wells monitor groundwater flowing ***toward*** the Landfill not ***from*** the Landfill. They are designed to monitor background water quality not to detect any escape from the landfill. Two up-gradient wells are typical and appropriate.

The question ultimately is the protectiveness of the landfill and the appropriate method to gather groundwater data. Mr. Snyder testified repeatedly that he designed the landfill to protect the groundwater used by any nearby water well, whether there are five or fifty or more.[19] The Amended PFD suggests that the water well search was not adequate (even though it complies with industry standards and the TCEQ rules, policies, and precedents) based on testimony from a witness with virtually no experience in the landfill industry and a published source that, in reality, does not support such an assertion. The overwhelming and only reliable, credible evidence establishes that the Applicant's search was more than adequate. IESI designed and

[19] *See, for example*, Transcript Vol. 2 p. 89/line 25 – p. 90/line 21; p. 95/line 25 – p. 96/line 2 Snyder Cross examination.

proposed a landfill which is protective of all nearby water wells, no matter how many there may be, in compliance with TCEQ rules, policy, and precedent. The Applicant used established, professional standards of care to collect reliable data of water sources, coupled with a professional evaluation of that information. The Commission should not adopt the findings proposed by the ALJ that the water well search was inadequate.

Nevertheless, as the Commission is aware, IESI has agreed to install groundwater monitoring wells completely around the entire Jacksboro Landfill as a special condition to the permit. These additional groundwater monitoring wells addressed any lingering concerns the ALJ may have had, and should address any legitimate concerns the Protestants may have.

2. Springs

In the Amended PFD, the ALJ clearly concludes that the Applicant did properly identify and address nearby springs. However, in the first sentence found at Part VI.F., the Amended PFD states that "[t]he ALJ finds that IESI did not conduct an adequate search of water wells and springs." IESI believes that this is a typographical error, and that the sentence was intended to read "[t]he ALJ finds that IESI did not conduct an adequate search of water wells." IESI would ask that the error be noted by the ALJ as such for clarity.

B. The Application properly identifies and describes the lowermost aquifer capable of producing significant groundwater.

The Applicant excepts to Proposed Findings of Fact Nos. 105 and 131 through 136, and 76 through 78 and 80 through 82. In addition to the discussion below, please see Attachment "A" for a discussion of the exceptions individually.

The applicable regulations require an applicant to describe the

> "...stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less." 30 TEX. ADMIN. CODE § 330.56(d)(2)(B).

The ALJ asserts that because the Application failed to recognize that there are wells in Jack County that withdraw water from what she terms the Pennsylvanian Canyon aquifer, the Application thus fails to identify the *lowermost* aquifer capable of producing groundwater. Once again, the ALJ relies on Report 308 in her Amended PFD and asserts that "it [Report 308] clearly shows that Pennsylvanian Canyon groundwater is used for domestic and livestock wells". While it is indeed true that Report 308 does show that Canyon Group groundwater may have some limited uses in some parts of Jack County, the Amended PFD itself recognizes that even Report 308 characterizes the Pennsylvanian Canyon groundwater as relatively poor quality, erratic and discontinuous.[20] The erratic and discontinuous nature of the water pockets make it virtually impossible to map the water occurrences in the Canyon Group, such that the author of Report 308 declined to even attempt to map the water because any such map would be misleading.[21] There is certainly nothing in Report 308 that suggests such uses in the area of the Jacksboro Landfill.

First, Report 308 shows no use of groundwater within one mile of the Landfill boundary for any purpose whatsoever. (See Figure 1). Both wells shown in Report 308 as being within one mile of the Landfill are denoted as being "unused or abandoned." The nearest "well" beyond the one mile radius is described to be nothing more than a test well drilled by the Texas Water Development Board on TxDOT right of way. It was not used for any purpose whatsoever other than the data gathered while it was drilled. There is simply nothing in Report 308 that identifies the actual withdrawal of water from the Canyon Group either on or near the Landfill Site.

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[20] *See, e.g.*, Transcript Vol. 2, p. 59/lines 4-15, Snyder Redirect and sources cited therein; Vol. 6, p. 104, Ross Cross Examination.

[21] Transcript Vol. 5, p. 115/line 10 through p. 116.line 9, Chandler Cross Examination.

The Jacksboro Landfill will be constructed in the Cretaceous Trinity Group which is made up of layers lain down in the Cretaceous historical period. The excavation for the Landfill will go into the top three layers of this Cretaceous age formation. These three Cretaceous layers are referred to in the Application as Strata I, IA, and II. The next lower layer, Stratum III, extends under the entire Landfill excavation and beyond the Site in all directions. This Stratum III layer has very low permeability and acts as a lower confining unit below the Landfill and below the groundwater present in the overlying Strata I, IA, and II. The ALJ generally agrees with the Applicant's overall description of the subsurface, as did the Protestant's expert, Dr. Lauren Ross.[22] Within the Application, therefore, this low permeability Stratum III which underlies the site and forms a lower confining unit is accurately and appropriately referred to as an "aquiclude" with respect to the site and surrounding area.

The ALJ concludes in the Amended PFD that this underlying Stratum III is the top layer of the Pennsylvanian Group based on the testimony of Two Bush's experts. For purposes of the Jacksboro Landfill, therefore, the ALJ and Two Bush effectively agree that the Pennsylvanian Group is an aquiclude in that its uppermost layer is virtually impermeable below and in the area of the Landfill. The Applicant thus appropriately identified the underlying strata as an "aquiclude" without intending to characterize every other stratigraphic unit within the formation wherever located in Jack or adjacent Counties.

The mere fact that certain deeper layers of the massive Pennsylvanian Group are shown to contain groundwater in other parts of Jack and adjacent Counties does not mean that those layers contain groundwater under the landfill. As Report 308 emphasized, groundwater in the Pennsylvanian Canyon is discontinuous and it would be misleading to map its location. More importantly and as the ALJ has correctly determined based on the evidence, Stratum III is an

[22] Transcript Vol. 6, p. 106.

aquiclude below the Site and will prevent any downward migration from the Landfill into any of the lower layers of the Pennsylvanian system. Any release of contaminants from the Landfill would stay within Stratum II and move to the north-northeast on top of the impermeable Stratum III and toward the groundwater monitoring system. As such, the potential existence of relatively poor quality, erratic and discontinuous groundwater in deeper formations of the Pennsylvanian system below Strata III is an academic inquiry that does not ultimately affect the design of the groundwater monitoring at the facility.

Admittedly, distinctions between individual systems, formations, groups, stratigraphic units and other such geologic nomenclature can be confusing. When the Protestants first asserted their misinterpretation of the Application as having concluded that the entire Pennsylvanian system in Jack County is an aquiclude, the City of Jacksboro sought to have placed in the Application for the benefit of the area's citizens a brief textual explanation explaining what the Applicant, the City of Jacksboro, and the Executive Director already understood. Of course, not wanting their misinterpretation clarified, Protestants objected to the clarifying text being included in the Application. Even though relevant TCEQ rules would allow such a clarification, the ALJ did not allow the clarification into the Application. Now, over a year later, the same misinterpretation has been argued by the Protestants and accepted by the ALJ as a basis for criticism of the Application.

The Applicant has properly and thoroughly characterized the subsurface geology as required by TCEQ rules and IESI urges the Commissioners to not adopt the ALJ's proposed finding otherwise. The Application does indeed identify and describe the Pennsylvanian Canyon and, for purposes of the Jacksboro Landfill, it is an aquiclude. When discussing the site geologic stratigraphy, therefore, Mr. Snyder and Dr. Kreitler, both expert hydrogeologists, testified that the Pennsylvanian was properly characterized in the Application as an aquiclude with respect to

the Landfill. The Application is not deficient in any manner for not identifying the Pennsylvanian Canyon Group as the lowermost aquifer capable of producing significant groundwater in the area of the Landfill.

IESI would like to emphasize, however, that the interpretation of the Application's characterization of the Pennsylvanian Canyon Group is largely an academic discussion that does not affect the site-specific hydrogeological investigation or the design of the groundwater protection systems. The Landfill's groundwater monitoring system is designed based on the site-specific data. As mentioned earlier, all credible evidence as well as the ALJ and Protestant's expert, Dr. Ross, agree that the impermeable Stratum III lies between and separates the landfill and the lower layers of the Pennsylvanian system. Even if there were groundwater in a lower layer of the Pennsylvanian, it would not and could not be impacted by the Jacksboro Landfill.

The Applicant's site specific data on groundwater is not contested except for a few musings here and there by the Protestant's witnesses. The ALJ agrees in the Amended PFD that the site specific subsurface investigation was adequate. The ALJ has suggested that any lingering concerns could easily be addressed by the addition of a Special Provision requiring additional monitoring wells. IESI has agreed and continues to agree to comply with such a Special Provision.

C. The Application is not deficient in describing the impact of the landfill on recharge areas within five miles of the site.

The Applicant excepts to Proposed Finding of Fact Nos. 131 through 136 and 105 and Proposed Conclusion of Law No. 8 concerning the impact of the Landfill on recharge areas. The Amended PFD recites the Protestant's argument that the Landfill, particularly the dewatering activities during excavation, may negatively affect groundwater recharge, which may affect water availability for neighboring water wells. Unlike the original PFD which focused in major part on concerns about groundwater availability, the Amended PFD appropriately recognizes that

such groundwater rights issues are beyond the jurisdiction of the TCEQ, and are instead governed by the well-established and exhaustively litigated "rule of capture."[23]

Unlike the original PFD, the Amended PFD focuses on findings that the Application did not adequately address areas of recharge to the aquifers within five miles of the Landfill pursuant to the requirement of 30 TEX. ADMIN. CODE § 330.56(d)(4)(I). The ALJ finds that the Applicant should have identified the Pennsylvanian formation as an area of potential recharge.

The relevant TCEQ requirement is found in Rule 330.56(d)(4) which provides as follows:

> "The owner or operator shall provide a description of the *regional* aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:
> ...
>
> (I) identification of areas of recharge to the aquifers within five miles of the site; ...."

30 TEX. ADMIN. CODE § 330.56(d)(4)(I) (emphasis added).

Clearly, the requirement found in subpart (I) of § 330.56(d)(4) to identify areas of recharge only applies to *regional* aquifers. In the Amended PFD, the ALJ appropriately recognizes that the Pennsylvanian formations are not a "regional aquifer." Accordingly, IESI was not required by the applicable TCEQ rule to identify the Pennsylvanian formations in its discussion of the impact of the Landfill on recharge areas within five miles of the site. The Commission should refuse to adopt the findings in the PFD concluding that IESI failed to identify the impact of the Landfill on recharge areas.

[23] The Commission's lack of jurisdiction over these matters and the history of the "rule of capture" is discussed at length in IESI's Exceptions to the original PFD, along with a discussion of case law and statutory and regulatory provisions particularly relevant to this matter. That discussion will not be repeated here, but is adopted by reference as if set out fully herein.

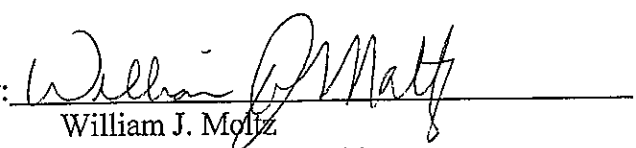
IV. SUMMARY

The PFD finds that the Applicant met its burden of proof on virtually all of the substantive issues referred by the TCEQ for consideration. It also recommends granting the permit with the inclusion of a Special Provision requiring the installation of additional groundwater monitoring wells encircling the Jacksboro Landfill site. IESI has agreed to this Special Provision although it does not believe the Special Provision is strictly necessary to address any deficiency with the Application. The additional groundwater monitoring wells are intended to provide unequivocal assurance of IESI's commitment to protecting the quality of groundwater in Jack County and to address the residual concerns previously expressed by the ALJ.

The Applicant would urge the Commissioners to issue an Order granting the permit and finding that the Applicant has met its burden of proof on all referred issues, as is required by the record evidence. Should the Commissioner's find that the proposed Special Provision is advisable, IESI will certainly comply with that Special Provision.

Respectfully submitted,

MOLTZ MORTON O'TOOLE, LLP
106 East 6th Street, Suite 700
Austin, Texas 78701
Telephone: (512) 439-2170
Facsimile: (512) 439-2165

By: 

William J. Moltz
State Bar No. 14259400
Janessa C. Glenn
State Bar No. 50511631

Attorneys for Applicant
IESI TX LANDFILL, L.P.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record via ____ email; __X__ certified mail; ____ First Class mail; ____ facsimile; __X__ hand delivery; ____ overnight, receipted delivery on September 24, 2009.

William J. Moltz

FOR THE PROTESTANTS
Marisa Perales
Lowerre, Frederick, Perales,
Allmon & Rockwell
707 Rio Grande, Suite 200
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346
marisa@lf-lawfirm.com
jenn@lf-lawfirm.com

FOR THE EXECUTIVE DIRECTOR
Anthony Tatu, Staff Attorney
Ron Olson, Staff Attorney
Texas Commission on Environmental Quality
MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel. (512) 239-0600
Fax (512) 239-0606
atatu@tceq.state.tx.us
rolson@tceq.state.tx.us

FOR THE PUBLIC INTEREST COUNSEL
Scott Humphrey, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, TX 78711-3087
Tel. (512) 239-6363
Fax (512) 239-6377
SHUMPHRE@tceq.state.tx.us

FOR THE CITY OF JACKSBORO
Kerry Russell
Russell & Rodriguez, LLP
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Tel. (512) 930-1317
Fax (866) 929-1641
krussell@txadminlaw.com

FOR THE CHIEF CLERK
LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel. (512) 239-3300
Fax (512) 239-3311

SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW

APPLICATION OF IESI TX LANDFILL	§	**BEFORE THE STATE OFFICE**
	§	
L.P. FOR A NEW TYPE 1 MSW PERMIT	§	**OF**
	§	
PROPOSED PERMIT NO. 2332	§	**ADMINISTRATIVE HEARINGS**

ATTACHMENT A
SPECIFIC EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW – AMENDED PROPOSAL FOR DECISION

I. INTRODUCTION

The record evidence establishes that IESI TX Landfill ("IESI") met its burden of proof on all issues referred to the State Office of Administrative Hearings ("SOAH") by the Texas Commission on Environmental Quality ("TCEQ"). Accordingly, the Administrative Law Judge ("ALJ") has appropriately recommended granting IESI the requested permit for a new Type 1 MSW Permit in Jacksboro, Texas (the "Landfill" or the "Jacksboro Landfill"). She has further recommended a Special Provision to the permit for the installation of additional groundwater monitoring wells. While IESI does not believe the Special Provision is necessary, IESI nevertheless is committed to adhering to the Special Provision should the Commissioners deem it to be prudent.

IESI agrees with the vast majority of the ALJ's Proposed Findings of Fact and Conclusions of Law as they are proposed, including those related to the site specific investigation, surface water protection, the liner system, slope stability, landfill design, and the Site Operating Plan. IESI appreciates the ALJ's obvious hard work and attention to this matter, and especially appreciates her attention to the Exceptions filed by the Parties to her original Proposal for Decision and the *amicus curiae* briefs that were filed by interested organizations. Certainly, we believe that the ultimate result recommended by the ALJ is appropriate.

In certain areas, additional clarity would more fully support the ultimate conclusion of law granting the permit. A certain limited number of the Proposed Findings of Fact and Conclusions of Law related to the identification and discussion of water wells, geologic requirements, and the impact of the Landfill on recharge areas are confusing and/or inappropriate and should, therefore, be changed or clarified.

II. PROPOSED FINDINGS OF FACT

The Applicant's exceptions to particular Proposed Findings of Fact are discussed below, and are more fully discussed in the body of Applicant's Exceptions to the Amended Proposal for Decision. The Applicant's proposed replacement Findings of Fact and Conclusions of Law are also provided below. Attached as Exhibit 1 to this Attachment A is a comprehensive draft Order for the Commission's consideration and convenience, which deletes the ALJ's Proposed Findings of Fact and Conclusions of Law that IESI has excepted to, and includes the findings and conclusions proposed by IESI. Exhibit 1 provides the Order for the convenience of the commissioners in adopting a final order.

The Proposed Findings of Fact and Conclusions of Law discussed below stem almost entirely from the ALJ's misinterpretation of the TCEQ's rules and policies governing the standard and appropriate methods for identifying water wells within one mile of a proposed landfill facility; the use of unreliable, inappropriate, and legally inadmissible "factual" assertions (the "chart" containing the result of conversations with untrained landowners and/or residents); and a misreading of a published material (Report 308).

A. The Proposed Findings of Fact for Water Wells; Springs; Usable Aquifer; Regional Aquifer; Groundwater Protection; Health of Protestants and Their Families

1. Water Wells and Springs

The Applicant generally agrees with Proposed Finding of Fact Nos. 122 and 123 in this Section.

The Applicant excepts to Proposed Finding of Fact Nos. 124 through 130 concerning wells. These Proposed Findings are not supported by the record. Instead, they rely on inherently unreliable and inadmissible information gathered in a survey of unknown persons done by other unknown persons with the help of persons who, although in some instances named, never were present at the hearing when facts were being discussed. By law, these are not "facts" which could possibly be determined at the hearing. In addition, to the extent they could be said to be based on "published materials", no such information is contained any published information. The ALJ's assumption that Report 308 shows the existence of water wells within one mile of the Landfill that were not identified in the Application is simply not factually true. Report 308 shows substantially fewer water wells within one mile of the facility than is indicated in the Application. Please see Applicant's Exceptions to Amended Proposal for Decision for a comprehensive discussion of identification of water wells.

Furthermore, the Proposed Findings of Fact do not include any findings with respect to springs, though the ALJ clearly concludes that the Applicant met its burden of proof on this issue.

IESI's Proposed Findings of Fact Nos. 204 through 207 in the attached Order addressing water wells and springs should be adopted by the Commission. IESI's Proposed Findings are supported by the record[1] and further support the ultimate Finding of Fact that the Applicant adequately identified all water wells and springs, as well as the ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

Findings of Fact Proposed by ALJ Which Should be Deleted

FOF 124	No regional or area water system is available for those residences.

[1] App. Ex. 100 at Part II, p. 11-12; Appendix IID Figure IID.1. and Attachment 4, Appendix 4A., Figure 4A.5; App. Ex. 1,Welch Direct Testimony at p. 26/ lines11-15; App. Ex. 100, Vol. 2, Part III at Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5; App. Ex. 9, Kreitler Direct Testimony, pp.8-10.

FOF 125	Within one mile of Applicant's property boundaries, there are 46 wells, the majority of which are within one mile of the proposed permit's boundaries.
FOF 126	The wells range in depth from about 70 feet below grade to 500 feet, but most are between 100 and 300 feet deep.
FOF 127	The shallower wells are likely completed in the Twin Mountains or Trinity Aquifer.
FOF 128	The deeper, higher yielding wells are consistent with the depth of the Pennsylvanian formation.
FOF 129	Most of the water wells are west and southwest of the site.
FOF 130	Many of the nearby wells appear to be in the Stratum IA sands.

Replacement Findings of Fact Proposed by IESI in Attached Order

FOF 204	The Application identifies the two unused water wells within the permit boundary. As shown by those maps, there are no other water wells identified within 500 feet of the proposed site.
FOF 205	The Application further identifies all the wells located within 1 mile of the permit boundary.
FOF 206	For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.
FOF 207	The Application adequately identifies and evaluates all springs and water wells.

2. Usable Aquifer

The Applicant excepts to Proposed Findings of Fact Nos. 131 through 136 in this Section of the Proposal for Decision. These Proposed Findings are not supported by the record evidence, and in some instances contradict other correct Proposed Findings. The findings rely upon the faulty premise the Applicant did not adequately identify water wells within one mile of the Landfill. As to Finding of Fact No. 136, while IESI does not agree that the Special Provision is necessary, IESI will agree to the Special Provision should the Commissioners deem it prudent.

FOF 209 Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not known to yield significant quantities of potable groundwater.

FOF 210 The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources." 30 TEX. ADMIN. CODE § 330.56(d)(4).

FOF 211 *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.

FOF 212 *Aquifers of Texas lists* the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in Aquifers of Texas are normally considered the "regional aquifers" of Texas.

FOF 213 The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

FOF 214 Applicant has agreed to adhere to Special Provision added to the permit requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

3. Regional Aquifers (includes site specific geology and subsurface investigation)

The Applicant generally agrees with Proposed Findings of Fact Nos. 92 through 104 in this Section.

The Applicant excepts to Proposed Finding of Fact No. 105. As discussed at length in other portions of IESI's Exceptions to the Amended PFD, the basic premise that IESI did not identify wells within one mile of the proposed facility is incorrect. Likewise, the evidence shows that IESI did identify the Pennsylvanian geologic system beneath the Landfill site - what the ALJ terms the "lowermost aquifer capable of providing useable groundwater" – is an aquiclude for

purposes of the Jacksboro Landfill. The overwhelming evidence supports a finding that the Pennsylvanian system is an aquiclude beneath the Landfill site. This Finding of Fact wholly contradicts all the credible record evidence.

Additional Findings of Fact would clarify and further support the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 150 through 163 in the attached Order detailing: (1) the groundwater formations; and (2) boring and sampling plan. These additional findings are supported by the record[3] and support the ultimate finding that IESI met it burden of proof with respect to hydrogeological, geological and geotechnical requirements, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

Findings of Fact Proposed by ALJ Which Should be Deleted

FOF 105	Because the Applicant did not identify wells within one mile of the proposed facility, it consequently did not identify the base of the lowermost aquifer capable of providing usable groundwater.

Replacement Findings of Fact Proposed by IESI in Attached Order

FOF 150	The Trinity Aquifer's Twin Mountains Formation of the Cretaceous System is the regional aquifer and is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.
FOF 151	Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not know to yield significant quantities of potable groundwater.
FOF 152	The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon

[3] App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-6; Prot. Ex. 6, Henderson Direct Testimony, p. 3. Transcript Vol. 2, p 59, Snyder Redirect, and sources cited therein; Transcript Vol. 6, p. 100, Ross Cross Examination; Transcript Vol. 5, p. 111, Chandler Cross Examination. Transcript Vol. 6, p. 150, Chandler Cross Examination.

published and open-file sources." 30 TEX. ADMIN. CODE § 330.56(d)(4).

FOF 153 — *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.

FOF 154 — *Aquifers of* Texas lists the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in Aquifers of Texas are normally considered the "regional aquifers" of Texas.

FOF 155 — The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

FOF 156 — The Applicant developed a boring and sampling plan in conjunction with the TCEQ. The plan for this facility was approved by letter dated March 8, 2004.

FOF 157 — The plan called for 26 bore holes at various points throughout the tract. The Applicant reasonably relied on the Executive Director's approval of the boring plan.

FOF 158 — The drilling was contracted out to Stefan Stamoulis, under the direction of Michael Snyder and Greg Adams. Mr. Stamoulis is himself a registered geologist and a very experienced professional.

FOF 159 — During the drilling phase of the investigation Mr. Adams was in contact with Mr. Stamoulis roughly two days per week while Mr. Snyder talked to Mr. Stamoulis every day, and on many occasions several times per day.

FOF 160 — Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken.

FOF 161 — On occasion wash borings were taken. This was done when the team was confident the drill was in a particular layer where the sediment was consistent. The driller would make a request to Mr. Snyder, who would look at his existing correlations and if appropriate, give the approval. An experienced driller can generally tell when a different material is encountered while drilling.

FOF 162 Even when taking wash borings the driller would stop every few feet and bring up the sample for a visual inspection. If any change was noticed, either by visual inspection or during drilling, the core barrel would be reinstalled and core sampling would begin again.

FOF 163 The data produced by the subsurface investigation supports the Applicant's delineation of Stratums I, II and II described above. The Application provides adequate geologic and hydrologic information, including properly identifying the lowermost aquifer capable of producing usable groundwater pursuant to the applicable TCEQ regulations.

4. Groundwater Protection

The Applicant generally agrees with Proposed Findings of Fact Nos. 56 through 74 and 79 in this Section. The Applicant generally agrees with Proposed Finding of Fact No. 75, except that the term "additional" should be removed. The two wells discussed in No. 75 are actually part of the eleven wells discussed in No. 74, rather than "additional" wells.

However, many of the Proposed Findings of Fact and Conclusions of Law in this Section are mere recitations of the Protestant's briefing arguments that are not supported by the record evidence and actually directly contradict other portions of the Amended PFD and proposed Findings of Fact and Conclusions of Law. These include Proposed Findings of Fact Nos. 76 through 78 and 80 through 82.

Proposed Finding of Fact No. 76 is unsupported by any admissible evidence in the record. As discussed at length in IESI's Exceptions to the Amended PFD, the ALJ incorrectly reads Report 308 as identifying groundwater wells in the Pennsylvanian Canyon formation within one mile of the permit boundary. Report 308 does not show this.

Proposed Finding of Fact No. 77 is misleading. Taken with Finding of Fact Nos. 76 and 78, the implication is that the Pennsylvanian must be an aquifer that will allow upgradient water

flow, which could potentially contaminate water wells. There is nothing in the record to support this implication, and certainly water cannot flow uphill.

Proposed Finding of Fact No. 78 directly contradicts Finding of Fact No. 62 (site gradient) and Finding of Fact No. 65. (direction of groundwater flow). No. 78 completely ignores the record evidence addressing groundwater flow that even the Protestant's expert agreed to.

Proposed Finding of Fact No. 80 is not supported by any credible evidence other than the musings of a Protestant witness. This is mere speculation. It also contradicts Finding of Fact No. 65 (direction of groundwater flow).

Proposed Finding of Fact No. 81 is not supported by the record evidence and directly contradicts Proposed Finding of Fact No. 62 (site gradient).

Proposed Finding of Fact No. 82 addresses the special provision suggested by the ALJ to add additional monitoring wells. While IESI does not believe that the special provision is necessary, and while this Proposed Finding of Fact actually contradicts Proposed Finding of Fact No. 62 (site gradient), IESI has agreed to the special provision should the Commission deem it prudent.

Additionally, important findings that were proposed as part of the original PFD are inexplicably and inappropriately absent from the Amended PFD. These include: (a) Stratum II is the uppermost aquifer underlying the site; (b) Stratum III is correlatable across the site and is the lower confining unit; (c) Applicant properly evaluated the stratigraphy; (d) The nine groundwater monitor wells would be screened in Stratum II at the north and east ends of the Site, consistent with Applicant's characterization of the uppermost aquifer and the ground water flow direction; (e) Two additional wells, one on the south boundary and one on the west boundary, have been proposed in upgradient positions; (f) Groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III; (g) Stratum IA is not present across

the entire site, it occurs in discontinuous lenses of sand, and it would be almost entirely removed during excavation of the site. These findings should be included.

Furthermore, additional Findings of Fact would clarify and further support the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 67 through 69, 72, 75, 80, 83, 86, 88, 89 through 92, and 94 through 99.

These additional findings are supported by the record[4] and support the ultimate finding that IESI met it burden of proof with respect to groundwater protection, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

Findings of Fact Proposed by ALJ Which Should be Deleted

FOF 75	Two additional wells, one on the south boundary and one on the west boundary, will also monitor Stratum II.
FOF 76	Groundwater wells within one mile of the permit boundary are in the Pennsylvanian Canyon formation.
FOF 77	The landfill site overlies both the Cretaceous and Pennsylvanian formations, and the Pennsylvanian formation flows generally to the west.
FOF 78	Points A-5 at 1,113.58 feet on the northwest corner of the site and F-20 at 1,112.06 in the southeast corner are the highest potentiometric points, but they are at opposite ends and have a trough between them; therefore, it is not clear what direction groundwater will flow.
FOF 80	During the excavation of Stratum IA, sands will still be present at the interface with the landfill sidewalls and extend to areas off-site, such as those into which groundwater wells are completed.

[4] App. Ex. 100, Vol. 2, Part III, Attach. 4, 4-27, through Attach. 5. App. Ex. 100, Vol. 2, Part III, Attach. 4, Appen. 4B, App. Ex. 7, Snyder Direct Testimony, p.21/lines 7-13. App. Ex. 7, Snyder Direct Testimony, p. 38; App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-31 to 4-32. App. Ex. 7, Snyder Direct Testimony, p. 37; App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-31 to 4-32. App. Ex. 100, Vol. 2, Part III, Attach. 4, Appendix 4E, Figure 4E.3. App. Ex. 7, Snyder Direct Testimony, p. 32. App. Ex. 100, Vol. 2, Part III, Attach. 5 at p. 5-4. App. Ex. 7, Snyder Direct Testimony, p. 41. App. Ex. 100, Vol. 2, Part III, Attach. 5, Appendix 5A, Figure 5A.1. App. Ex. 7, Snyder Direct Testimony, p. 40. Figure 5A.1. App. Ex. 100, Vol. 3, Part III, Attach. 15; App. Ex. 6, Adams Direct Testimony, pp. 19-20. Transcript Vol. 1, p. 180 and pp. 206-207, Adams Cross-Examination. App. Ex. 100, Vol. 2, Part III, Attach. 4; App. Ex. 7, Snyder Direct Testimony, p. 39.

FOF 81	Contaminants could escape from the side liners into the Stratum IA sands, past the Stratum II monitoring wells.
FOF 82	Since leachate may migrate off-site in Stratum IA, IESI should install monitoring wells in that stratum.

Replacement Findings of Fact Proposed by IESI in Attached Order

FOF 80	The Applicant evaluated the vertical and horizontal flow characteristics of groundwater through an initial regional analysis followed by a site-specific investigation consisting of extensive boring and sampling, along with the installation and monitoring of fourteen piezometers at the site.
FOF 81	The Applicant's boring and sampling program was reviewed and approved by the TCEQ staff by letter dated March 8, 2004.
FOF 84	Stratum I-A is not present across the entire site, it occurs in discontinuous lenses of sand and it will be almost entirely removed during excavation of the site.[5]
FOF 91	Precipitation infiltrating from the surface and potential contaminants are not likely to move laterally in Stratum I.
FOF 93	The Applicant properly evaluated Stratum I-A characteristics.
FOF 98	Stratum II is the uppermost aquifer underlying the site as defined by the regulations.
FOF 99	Stratum III is correlatable across the site and is the lower confining unit.
FOF 102	The Applicant properly evaluated Stratum II characteristics.
FOF 109	Piezometer locations were selected to provide horizontal and vertical coverage of the uppermost aquifer and uppermost water bearing unit across the site from data gathered during site exploration.
FOF 110	The Applicant properly evaluated the site piezometers.
FOF 113	The nine wells would be screened in Stratum II at the north and east ends of the site, consistent with Applicant's

[5] This Finding of Fact was in the original PFD, but is absent from the Amended PFD.

characterization of the uppermost aquifer and the groundwater flow direction.[6]

FOF 114 Two wells, one on the south boundary and one on the west boundary, have been proposed in upgradient positions.[7]

FOF 115 If any leachate escaped from the sumps at the bottom of the facility, a contaminant would slowly make its way through the lower permeability materials in the upper parts of Stratum II. If it made it through those materials, it would move slowly downward into the more permeable sands of Stratum II.

FOF 116 Recharge of groundwater to Stratum II is from the outcrop of Stratum II to the west of the site.

FOF 117 The most likely pathway of groundwater flow in Stratum II is toward the north-northeastern perimeters of the site. Groundwater monitoring wells are proposed to monitor this zone.

FOF 118 Groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III.[8]

FOF 120 The low permeability shale and clayey shale inhibits downward movement of groundwater from the overlying Stratum II aquifer.

FOF 121 The Applicant properly evaluated Stratum III characteristics.

FOF 122 Applicant properly evaluated the site stratigraphy.[9]

5. Health of Protestants and Their Families

The Applicant notes that the ALJ has not proposed any Findings of Fact to address the issue of protection of the Health of the Protestants and Their Families.

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[6] This Finding of Fact was in the original PFD, but is absent from the Amended PFD.

[7] This Finding of Fact was in the original PFD, but is absent from the Amended PFD.

[8] This Finding of Fact was in the original PFD, but is absent from the Amended PFD.

[9] This Finding of Fact was in the original PFD, but is absent from the Amended PFD

The Commission should adopt IESI's Proposed Findings of Fact Nos. 256 through 259 on this topic. The information in these additional Findings of Fact is supported by the record[10] and further supports the ultimate finding that the Landfill will not adversely affect the health of the Protestants and their families, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

Replacement Findings of Fact Proposed by IESI in Attached Order

FOF 256	TCEQ regulations at 30 TEX. ADMIN. CODE Chapter 330 as applicable to this permit application are designed to ensure that a Type I municipal solid waste landfill is protective of public health.
FOF 257	The Jacksboro Landfill has been designed and will be operated in compliance with applicable provisions of 30 TEX. ADMIN. CODE Chapter 330 and other applicable TCEQ regulations.
FOF 258	The landfill, as designed in compliance with the applicable TCEQ regulations, will be protective of the environment and the health of citizens both from a land-use and a groundwater perspective.
FOF 259	The Application demonstrates that the operation of the Jacksboro Landfill will not adversely affect the health of the Protestants and their families.

B. Other Categories of Proposed Findings of Fact

As noted before, IESI agrees with the vast majority of the ALJ's Proposed Findings of Fact and Conclusions of Law, and appreciates the ALJ's obvious hard work in this case. For the following categories, IESI agrees that the Findings of Fact proposed by the ALJ are essentially accurate. However, there are some instances where the ultimate Order to be issued by the Commissioner's would benefit from some additional clarifying findings. Such clarifying findings were proposed by IESI for these categories in its Exceptions to the original PFD issued

[10] App. Ex.16, B.C. Robison Direct Testimony. App. Exhibit 13, Worrall Direct Testimony, pp. 13-14; App. Exhibit 7, Snyder Direct Testimony, pp. 60-62. *See, generally,* Applicant's evidence cumulatively for support of ultimate Findings 204 and 206.

by the ALJ. Because the Amended PFD and the original PFD are virtually the same with respect to these issues, IESI will not list each of the proposed additional clarifying findings here, but rather will adopt by reference its previously filed Exceptions to the original filed on June 1, 2009.

None of the clarifying Findings change the result; rather, they lend support to the final result. Because we continue to believe these additional Findings would support the final Order, IESI reasserts its request that the Commission include its proposed additional Findings of Fact for these issues as stated in its prior filings.

These additional findings are included in IESI's attached proposed final Order.

Findings of Fact Proposed by IESI for Additional Support

Introduction and Procedural History (FOF 4, 5, 6, and 16).

Surface Water Protection (FOF 27-30, 41, 45–51, 56–64, 66, 77-79).

Liner and Leachate System (FOF 130–131)

Geological Requirements (FOF132, 135–149)

Slope Stability (FOF 175–177, 180-181)

Land Use Issues (FOF 183, 188, 195-201)

Site Operating Plan (Fire Protection) (FOF 220-221)

Vectors and Scavenging (FOF 228, 231-232)

Windblown Waste (FOF 235)

Employee Training (FOF 255)

Buffer Zones (FOF 262-266)

Nuisance Conditions (FOF 273-284)

Regional Coordination (FOF 289)

Endangered and Threatened Species (FOF 294-295)

Compliance History (FOF 298)

Closure and Post Closure Plans (FOF 301-302)

Permit Term (FOF 304-305)

III. PROPOSED CONCLUSIONS OF LAW

IESI agrees with the ALJ's Proposed Conclusions of Law Nos. 1 through 4; 6 through 7; 9 through 22; 24; 26 through 43; 46; 48; 50 through 52. IESI excepts to Proposed Conclusions of Law Nos. 5, 8, 23, 25, 44, 45, 47, and 49.

Proposed Conclusion of Law No. 8 finds that Applicant met its burden of proof with respect to all referred issues except identification of groundwater wells within one mile of the proposed facility boundary and identification of areas of recharge. This contradicts the credible, admissible evidence, misreads certain documents in evidence, and misreads the applicable TCEQ rules. The record evidence establishes that the Applicant met its burden of proof on all issues referred by the Commission.

Proposed Conclusions of Law Nos. 5, 23, 25, 44, 45, 47, and 49 all imply that the Application only complies with specified statutory and regulatory provisions to the extent the Special Provision is included in the permit. The record evidence shows that the Application complies with the cited statutory provisions and regulations without the need for the special provision. Nevertheless, IEIS will agree to comply with the special provision should be it added to the permit and is including language in its proposed Conclusion of Law indicating that the Special Provision will be included in the Permit.

Conclusions of Law Proposed by ALJ Which Should be Revised or Deleted

COL 5	With the addition of the Special Provision, Applicant's application complies with Tex. Health and Safety Code §§ 361.066 and 361.068, and demonstrates that it will comply with all relevant aspects of the application and design requirements as provided in 30 Tex. Admin. Code Ann. §§ 330.71(a) and 330.57(d).
COL 8	Applicant met its burden with respect to all referred issues except identification of groundwater wells within one mile of the proposed facility's boundaries and areas of water recharge.

COL 23 With the addition of the Special Provision, Applicant's geology report will comply with 30 Tex. Admin. Code Ann. § 330.63(e).

COL 25 With the incorporation of the additional 28 monitoring wells into the groundwater monitoring system, the application will meet the requirements of 30 Tex. Admin. Code Ann. §§ 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.

COL 44 The proposed groundwater monitoring system as revised to incorporate the additional monitoring wells into the groundwater monitoring system will provide adequate groundwater monitoring, in compliance with 30 Tex. Admin. Code Ann. §§ 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.

COL 45 As revised, the proposed groundwater monitoring system will adequately protect human health and the environment in compliance with 30 Tex. Admin. Code Ann. § 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.

COL 47 With the addition of the Special Provision, the application will comply with Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC 330.4(m) and 330.51(b)(1).

COL 49 With the addition of the Special Provision, the application will meet all requirements of the Solid Waste Disposal Act, Texas Health and Safety Code Ann. Chapter 361 and 30 TAC Chapter 330.

Replacement Conclusions of Law Proposed by IESI in Attached Order

COL 22 Applicant's application complies with Tex. Health and Safety Code §§ 361.066 and 361.068, and demonstrates that it will comply with all relevant aspects of the application and design requirements as provided in 30 Tex. Admin. Code Ann. §§ 330.71(a) and 330.57(d).

COL 48 The Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater and fulfills the requirements the applicable TCEQ Rules, including of 30 TEX. ADMIN. CODE § 330.56(e)(2)-(4) and § 330.56(D)(5)(C) regarding the proper evaluation and presentation of information on the vertical and horizontal flow characteristics of groundwater.

COL 49	The proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring and IESI fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(e)(5) and § 330.230-.234 and 330.241 in regards to the proposed groundwater monitoring system.
COL 50	The application will meet the requirements of 30 Tex. Admin. Code Ann. §§ 330.63(b)(4), 330.401, 330.404, 330.405, 330.407, and 330.403.
COL 53	The landfill application provides adequate geological and hydrological information and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(D)(1)-(4); § 330.53(b)(10)(A) in regards to the adequacy of the geological and hydrological information.
COL 54	The proposed groundwater monitoring system will adequately protect human health and the environment in compliance with 30 Tex. Admin. Code Ann. § 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.
COL 55	The application will comply with Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC 330.4(m) and 330.51(b)(1).
COL 56	Applicant's geology report complies with 30 Tex. Admin. Code Ann. § 330.63(e).
COL 64	The application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(8)(E), § 330.52(b)(4)(D) and § 330.52(b)(5) in regards to adequately identifying and evaluating all springs, water wells, oil and gas wells, homes, churches, and other site specific issues which require special consideration under Commission rules.
COL 66	Applicant properly described all groundwater recharge areas within five miles of the site.
COL 73	The application will meet all requirements of the Solid Waste Disposal Act, Texas Health and Safety Code Ann. Chapter 361 and 30 TAC Chapter 330.

COL 75	Based on all the foregoing Findings of Fact and Conclusions of Law, the TCEQ Permit No. 2332 for a municipal solid waste landfill should be granted, with a Special Provision requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

There are also certain referred issues for which the ALJ has not proposed a conclusion of law, but where the ALJ clearly has found IESI met its burden of proof. For purposes of clarity, IESI has proposed conclusions of law to address those issues. Please see the attached Order, Proposed Conclusions of Law Nos. 14, 34, 35, 36, 37, 38, 39, 40, 41, 42, 46, 47, 51, 52, 57, 58, 59, 60, 61, 62, 63, 65, and 71.

Finally, the attached Order reflects minor revisions to various of the ALJ's Proposed Conclusions of Law to add references to applicable statutory or regulatory provisions where the Conclusion finds IESI to be in compliance with said provision. These minor revisions are set out in the Order, and are not repeated here. Please see the attached Order Conclusion of Law Nos. 2, 16, 17, 19, 26, 32, 33, 43, and 44.

IV. CONCLUSION

While IESI does not object to the inclusion of the special provision suggested by the ALJ in the Amended Proposal For Decision and will certainly comply with that special provision, the ALJ has included certain Findings of Fact and Conclusions of Law which we believe are inconsistent with the facts demonstrated in the record and inconsistent with the law as previously applied by the TCEQ on countless occasions. The Jacksboro Landfill, as proposed, is protective of health and the environment. With the addition of the ALJ's suggested special provision, the Jacksboro Landfill will include unprecedented groundwater monitoring and not only does a preponderance of the evidence support issuance, as required, but there can be no reasonable doubt whatsoever regarding the protectiveness of the Landfill's design and operations. IESI has

included these suggested revisions to the ALJ's proposed findings of fact and conclusions of law to make the record more clear regarding the Jacksboro Landfill.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER
GRANTING THE APPLICATION OF IESI TX LANDFILL, L.P., FOR PERMIT NO. 2332 FOR A NEW TYPE 1 MUNICIPAL SOLID WASTE PERMIT
SOAH DOCKET NO. 582-08-1804
TCEQ DOCET NO. 2007-1302-MSW

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the application of IESI TX Landfill L.P. ("IESI" or "Applicant") for Permit No. MSW-2332 to authorize Applicant to construct a new Type 1 Landfill in Jack County, Texas. Sarah G. Ramos, Administrative Law Judge ("ALJ") with the State Office of Administrative Hearings ("SOAH"), presented an Amended Proposal for Decision ("Amended PFD"), which recommended that the Commission grant IESI the permit with a Special Provision added to the permit. After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Introduction and Procedural History

1. On April 5, 2005, the City of Jacksboro (City) filed an application for a new Type I municipal solid waste landfill (the landfill). The application was designated as TCEQ Permit No. 2332.

2. The permit application was declared administratively complete on April 29, 2005.

3. In August 2006, a revised application was submitted to the TCEQ to reflect IESI TX Landfill L.P. (IESI or Applicant) as the Applicant.

4. At TCEQ's open meeting on January 30, 2008, the Commission evaluated requests for hearing on the application. The Commission granted the hearing requests of Dr. James Henderson, Gloria Sprencel, and the Two Bush Community Action Group and referred IESI's application to the SOAH for a contested case hearing on the issues of: whether there was proper notice of the landfill application; whether the site operation plan provides adequate controls for fire protection; odors, dust and air criteria; landfill gas; vectors; scavenging; windblown waste; screening of prohibited waste; ponded water; and site access, and is adequate to train employees and guide day-to-day operations of the facility; whether operation of the landfill will adversely affect the health of the requestors and the requestors' families; whether the proposed landfill is compatible with surrounding land uses and residential growth trends; whether the proposed buffer zones and screening are adequate; whether the application includes adequate transportation information; whether the Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater; whether the proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring; whether the liner and leachate system are adequate to protect against groundwater contamination; whether the geotechnical evaluation is adequate to ensure the stability of slopes and materials used for sidewalls; whether the proposed landfill is compatible with the Regional Solid Waste Management Plan; whether the landfill application provides adequate geologic and hydrologic information; whether the application

includes the required information on soils; whether the Applicant provided adequate information regarding proposed surface water controls, floodplains, drainage route runoff from the facility, and off-site storm water contamination, including Jasper Creek; whether the appropriate rainfall data was used in the calculation of surface drainage; whether the proposed landfill is located in a wetland or an area with faults and fractures; whether the Applicant adequately provides for closure and post closure plans and proposes adequate financial assurance; whether the Applicant adequately evaluated the presence of and potential adverse effects of the landfill on endangered and threatened species; whether the proposed permit is adequately protective to prevent nuisance conditions; whether the Applicants compliance history warrants the granting of the permit; whether the application includes adequate proof of property interests; whether the application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules; and whether the permit term should be for life of the facility. The TCEQ denied all other hearing requests, requests for reconsideration, and issues. The Executive Director was directed to participate in the hearing. The Administrative Law Judge was directed to submit a Proposal for Decision and a draft order with Findings of Fact, Conclusions of Law and Ordering Provisions.

5. Notice of the preliminary hearing was properly and timely sent to interested parties on February 27, 2008. The notice included the time, date, and place of the hearing, the matters asserted, and the applicable statutes and rules.

6. On April 2, 2008, ALJ Kerry Sullivan held a preliminary hearing in Jacksboro, Texas, at the Jack County Courthouse at which he concluded that the Commission had jurisdiction to

consider and act on IESI's permit application, SOAH had jurisdiction to conduct a hearing and to prepare a Proposal for Decision (PFD), and notice was proper and timely provided in this case.

7. At the preliminary hearing, the following parties were admitted: IESI TX Landfill, LP, represented by William J. Moltz, R. Steven Morton, Brian J. O'Toole, and Janessa C. Glenn; the City of Jacksboro, represented by Arturo D. Rodriguez, Jr., Kerry E. Russell, and David L. Spiller; the Protestants, Two Bush Community Action Group, represented by Eric M. Allmon and Marisa Perales; TCEQ's Office of Public Interest Counsel, represented by Scott A. Humphrey; and TCEQ's Executive Director, represented by Anthony C. Tatu.

8. On April 18, 2008, ALJ Sullivan issued Order No. 1, Confirming Action Taken at Preliminary Hearing and Setting Procedural Schedule.

9. On June 13, 2008, ALJ Sullivan issued Order No. 3, Granting Unopposed Motion to Revise Procedural Schedule and Hearing on the Merits. The order set the date, time, and location for the hearing on the merits.

10. ALJ Sullivan's orders were sent to all parties by either facsimile transmission or regular mail.

11. ALJ Sarah G. Ramos convened the hearing on the merits on October 13, 2008, at SOAH, 300 W. 15th Street, Austin Texas. The hearing continued from day to day at SOAH, except that one day of the hearing was conducted at the Jack County Courthouse, 100 Main Street, Jacksboro, Texas. The hearing concluded on October 23, 2008. The record closed on March 6, 2009.

12. The landfill would be a new Type I municipal solid waste (MSW) landfill located in southeast Jack County, Texas.

13. The facility would serve a population equivalent of 171,000 people in the City, Jack County, and surrounding areas.

14. The landfill would be located approximately 13 miles southeast of the City and 1.25 miles south of State Highway 199.

15. The landfill's proposed site would consist of approximately 275 acres, with a landfill footprint of approximately 202 acres.

16. The landfill would accept waste generated from residential, commercial, institutional, municipal, manufacturing, industrial, recreational, and construction sources within the landfill service area. It is anticipated wastes accepted will include paper, food wastes, glass, aluminum, metals, plastics, grass clippings, other organic wastes, wood wastes, textiles, brinks, and other inert materials. Special wastes will also be accepted at the facility including dead animals, slaughterhouse wastes, non-regulated asbestos containing material (non-RACM), empty containers, municipal water and wastewater treatment plant sludges, and grease or grit trap waste. Consistent with 30 TEX. ADMIN. CODE § 330.5 the facility will not accept Class 1 nonhazardous industrial wastes, regulated hazardous wastes, liquid wastes, radioactive wastes, PCB wastes, infectious medical waste, or other wastes prohibited by TCEQ regulations.

17. The facility would receive an initial average of 500 tons of municipal solid waste per day. The landfill's waste would ultimately be composed of 50 million cubic yards of waste and daily cover, and would include household and putrescible waste; Class 2 industrial waste; Class 3 industrial waste; and special waste, as allowed by TCEQ.

18. Applicant expects the facility to last 60 years.

Surface Water Protection

19. The landfill would be located in southeast Jack County in the West Fork of the Trinity River drainage basin.

20. The landfill permit boundary consists of three drainage areas in its undeveloped condition.

21. Under existing conditions, the stormwater runoff from the landfill property runs off into unnamed tributaries of Little Beans Creek to the west and Jasper Creek to the east.

22. Under existing conditions, runoff from the west portion of the landfill contributes to an existing tributary of Little Beans Creek just west of the proposed permit boundary.

23. The north part of the site contributes to small tributaries of Jasper Creek to the north of the proposed permit boundary.

24. The south part of the site runs off into a series of smaller tributaries of Jasper Creek south of the permit boundary and eventually enters a tributary of Jasper Creek east of the site.

25. Little Beans Creek and Jasper Creek are tributaries to Lake Bridgeport, located approximately 12 miles northeast of the landfill permit boundary.

26. The existing streams or creeks running through or adjacent to the site are intermittent streams.

27. The Application includes documentation that the Jacksboro Landfill will not cause discharges in violation of applicable Commission rules.

28. The Application includes provisions for the design, construction and maintenance of a run-off management system.

29. The Application includes provisions for the design, construction, and maintenance of swales, downchutes, embankments, drainage structures, perimeter drainage systems, and detention basins properly designed to handle the run-off.

30. The Application includes provisions for the grading of the slopes of the sides and toe.

31. When constructed, the facility's stormwater runoff would be collected in swales located near the upper grade break on the landfill and on the four (horizontal) to one (vertical) side slopes, leading to drainage let-down structures or chutes on the 25% slopes and to the perimeter drainage system.

32. The perimeter drainage system would be constructed as each sector is developed and is designed to convey the 25-year/24-hour runoff from the developed landfill consistent with TCEQ regulations.

33. The perimeter channels and detention ponds were designed to convey the runoff from a 100-year rainfall event.

34. Stormwater drainage from developed areas would be directed to detention ponds before being discharged offsite.

35. The detention ponds were designed to reduce the peak runoff from the developed landfill to pre-developed flow rates.

36. The detention pond outlet structures are designed as energy dissipaters to reduce the velocity and turbulence of the flow leaving the detention ponds.

37. Applicant would file a Notice of Intent with the TCEQ to discharge stormwater runoff consistent with a Texas Pollutant Discharge Elimination Systems (TPDES) General Permit No. TX05000 relating to stormwater discharges associated with industrial activity.

38. The final cover drainage system swales and chutes are designed to convey the 25-year peak flow rate. These swales, channels, and chutes will also reduce maintenance at the site after closure by minimizing erosion.

39. The stormwater outfall locations along the permit boundary remain consistent with the pre-development outfall locations.

40. The 25-year and 100-year discharge rates for post-development conditions would be approximately equal to the pre-development discharge rates.

41. The post-developed water surface elevations, peak flow rates, velocities, and runoff volumes are approximately at the pre-development water surface elevations, peak flow rates, velocities, and runoff volumes at the pre-developed outfall locations at the permit boundary.

42. Applicant used the United States Army Corps of Engineers (USACE) HEC-HMS and HEC-RAS computer models to determine and compare pre- and post-development drainage patterns.

43. The HEC-HMS and HEC-RAS models were proper and appropriate under TCEQ rules and "Guidelines for Preparing a Surface Water Drainage Report for a Municipal Solid Waste Facility" (August 2006).

44. The natural drainage conditions at the permit boundary would not be significantly altered by the proposed landfill development.

45. The Application includes a groundwater and surface water protection plan and drainage plan, including demonstration that natural drainage patters will not be significantly altered as a result of the proposed landfill development.

46. The Application includes a final contour map.

47. The Application includes provisions that address ponded water.

48. A separate stormwater and surface water system has been designed to keep ponded waters that have not come in contact with solid waste at the landfill separated from leachate and contaminated water.

49. The leachate and contaminated water management plan for the Jacksboro Landfill will ensure the proper management of those materials.

50. The Jacksboro Landfill development will not significantly alter natural drainage patterns.

51. The proposed landfill design and operation would not result in any significant change to natural drainage patterns from pre-development to post-development conditions.

52. While a small area at the southeast corner of the site where Jasper Creek is located would be in the 100-year floodplain of Jasper Creek, that floodplain is not in an area where any construction of improvements or other activities are proposed.

53. The landfill would not significantly alter the 100-year floodplain of Jasper Creek at any location.

54. The landfill is located in an unincorporated area of Jack County and the Federal Emergency Management Agency has not defined the limits of the 100-year floodplain for this part of the county.

55. Applicant properly used USACE HEC-RAS and HEC-HMS models to define the pre- and post-development 100-year floodplain for Jasper Creek.

56. Jasper Creek is the only waterway with a 100-year flood potential which could potentially include portions of or could potentially be affected by activities on the site.

57. The 100-year floodplain for Jasper Creek is outside the landfill footprint and the perimeter drainage system for the Jacksboro Landfill.

58. No construction or operation associated with the Jacksboro Landfill will be located in a 100-year floodplain.

59. The landfill footprint will not be in a flood prone area.

60. Other than the run-on from Jasper Creek, the Site is topographically up-gradient from adjacent property, and no run-on will enter the Jacksboro Landfill.

61. The Application adequately addresses the run-on associated with Jasper Creek.

62. The Application contains a certification of compliance stating that the proposed landfill is in compliance with Subtitle D.

63. No leachate will be discharged off-site.

64. Leachate will be properly disposed of in accordance with TCEQ regulations.

65. Temporary containment berms will be constructed around the active face to collect and contain surface water that has come into contact with waste. In addition to the planned containment berms around the active face, temporary containment berms will be constructed whenever needed to collect contaminated water. .

66. Engineering features will be used to minimize contaminated water generation.

67. Daily cover and intermediate cover would be placed over filled areas to minimize the area of exposed waste.

68. The containment berms would provide storage for the 25-year, 24-hour storm event.

69. Contaminated water would be transported along with leachate to publicly owned treatment works.

70. Contaminated water would not be discharged into waters of the United States.

71. The Application adequately describes a leachate management plan.

72. Applicant provided adequate information regarding surface water controls, floodplains, drainage route runoff from the facility, and off-site stormwater contamination, including Jasper Creek.

73. Applicant used Abilene rainfall data within the EPA Hydraulic Evaluation of Landfill Performance (HELP) model to evaluate the leachate collection system.

74. Of those cities in the model, Abilene and Dallas are geographically closest to Jacksboro.

75. Dallas has more average annual rainfall than Abilene; however, the Dallas data may actually underestimate the maximum head on the liner.

76. The Abilene rainfall data was an appropriate choice to include in the HELP model.

77. Abilene rainfall data was conservative data to use in the HELP model.

78. Appropriate local rainfall data was used in the surface runoff and run-on analysis for purposes of drainage and floodplain analysis.

79. The Applicant used appropriate rainfall data in the calculation of surface drainage.

Groundwater Protection

80. The Applicant evaluated the vertical and horizontal flow characteristics of groundwater through an initial regional analysis followed by a site-specific investigation consisting of extensive boring and sampling, along with the installation and monitoring of fourteen piezometers at the site.

81. The Applicant's boring and sampling program was reviewed and approved by the TCEQ staff by letter dated March 8, 2004.

82. Three principal geologic units underlie the site, which Applicant described as Stratum I (primarily of clay and shale), Stratum II (sandstone and siltstone), and Stratum III (shale and clayey shale).

83. Stratum I has interbeds of sandstone and siltstone identified as Stratum IA.

84. Stratum IA is not present across the entire site, it occurs in discontinuous lenses of sand, and it would be almost entirely removed during excavation of the site.

85. The geologic materials in Stratum IA are discontinuous and uncorrelatable across the site.

86. Applicant plans to excavate the landfill site to 74 feet below the ground surface.

87. Applicant will excavate Stratum IA sands almost completely during the landfill's construction.

88. Water is contained at discontinuous points in the Stratum IA sands.

89. Water levels from Stratum IA indicate higher hydraulic heads on the south portion of the site descending to lower heads on the north end of the site.

90. Stratum IA becomes less sandy and primarily clayey on the downgradient north and east sides of the site, preventing lateral migration of groundwater in Stratum IA.

91. Precipitation infiltrating from the surface and potential contaminants are not likely to move laterally in Stratum I.

92. Stratum I-A does not require monitoring because it is not present across the entire site, it occurs in discontinuous lenses of sand and it will be almost entirely removed during excavation of the site.

93. The Applicant properly evaluated Stratum I-A characteristics

94. Stratum II has interbedded lenses and seams of clay and shale identified as Stratum IIA.

95. Groundwater is present in the sandstones and siltstones of Stratum II.

96. Groundwater generally flows to the north-northeast in Stratum II at about 15 feet per year.

97. Stratum II sandstones and siltstones have hydraulic conductivity ranging from $5.81x10^{-4}$ to $3.77x10^{-5}$ cm/sec.

98. Stratum II is the uppermost aquifer underlying the site as defined by the regulations.

99. Stratum III is correlatable across the site and is the lower confining unit.

100. Stratum III is a reddish-brown to greenish-gray, hard shale and clayey shale with interbedded silty shale and occasional silt parting and is correlatable across the site.

101. Stratum III has a hydraulic conductivity of $4.5x10^{-8}$ cm/sec

102. The Applicant properly evaluated Stratum II characteristics.

103. Applicant properly evaluated the site stratigraphy.

104. Following the drilling and grouting of the site exploration borings, fourteen piezometers were installed.

105. Eight of these piezometers (A-5, A-20, C-10, D-5, D-20, F-15, F-20, and G-5) were screened in Stratum II.

106. Three piezometers (B-15, D-10S, and D-15) were used to characterize the groundwater in Stratum IA.

107. Three piezometers (D-10C, E-20, and F-10) were screened in the clays and shales of Stratum I to characterize hydraulic head within the upper clay unit.

108. The piezometers were monitored thirteen times during the course of a year, and measurements of water levels were made to within 0.01 feet using an electronic water-level indicator.

109. Piezometer locations were selected to provide horizontal and vertical coverage of the uppermost aquifer and uppermost water bearing unit across the site from data gathered during site exploration.

110. The Applicant properly evaluated the site piezometers.

111. Applicant will have 11 groundwater monitoring wells that screen Stratum II. Nine wells will be placed on the north and east boundaries. Applicant will place them no more than 600 feet apart.

112. Two wells, one on the south boundary and one on the west boundary, will also monitor Stratum II.

113. The nine wells would be screened in Stratum II at the north and east ends of the site, consistent with Applicant's characterization of the uppermost aquifer and the groundwater flow direction.

114. Two wells, one on the south boundary and one on the west boundary, have been proposed in upgradient positions.

115. If any leachate escaped from the sumps at the bottom of the facility, a contaminant would slowly make its way through the lower permeability materials in the upper parts of Stratum II. If it made it through those materials, it would move slowly downward into the more permeable sands of Stratum II.

116. Recharge of groundwater to Stratum II at the site is from the outcrop of Stratum II to the west of the site.

117. The most likely pathway of groundwater flow in Stratum II is toward the north-northeastern perimeters of the site. Groundwater monitoring wells are proposed to monitor this zone.

118. Groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III.

119. Stratum III is correlatable across the site and is the lower confining unit as described by the regulations.

120. Permeability testing indicates that Stratum III has a hydraulic conductivity of $4.5x10^{-8}$ cm/sec. The low permeability shale and clayey shale inhibits downward movement of groundwater from the overlying Stratum II aquifer.

121. The Applicant properly evaluated Stratum III characteristics.

122. The Applicant properly evaluated site stratigraphy.

Liner and Leachate System

123. The composite liner system would have a two-foot-thick compacted soil liner, a 60-mil flexible membrane liner, and a two-foot-thick layer of protective cover.

124. The compacted soil liner, the lower unit of the composite liner system, would have a two-foot-thick layer of relatively homogeneous cohesive materials.

125. The compacted soil liner material would have a plasticity index of at least 15, a liquid limit of at least 30, at least 30% passing the No. 200 sieve, and 100% passing the one-inch sieve.

126. The compacted soil liner would be compacted to at least 95% of the standard Proctor at or above the optimum moisture content and would have a laboratory permeability of 1×10^{-7} cm/sec or less.

127. The leachate system was designed with six-inch diameter pipes in gravel-struck trenches.

128. The leachate collection system could accommodate rainfall in excess of the amounts estimated for Dallas or Abilene.

129. The liner and leachate systems would be adequate to protect against groundwater contamination beneath the site.

130. The Applicant used Abilene data in the HELP model. Dallas is closer to the landfill than Abilene. Dallas has more average annual rainfall than Abilene; however, the Dallas data may actually underestimate the maximum head on the liner, and thus the Abilene data results in a more conservative model.

131. Regardless of the city selected, the leachate collection system could accommodate rainfall far in excess of the amounts estimated for Dallas or Abilene. The leachate system was designed with six-inch diameter pipes in gravel-struck trenches. This is a conservative design because it is larger than the Applicant calculated it would ever need.

Geological Requirements

132. The Application provides adequate geologic and hydrologic information.

133. The proposed facility location is near the western edge of the Western Cross Timbers physiographic province that is characteristic of Cretaceous sandstones.

134. The Cretaceous sandstones dip generally to the east and sit atop older Pennsylvanian System sediments such as the Canyon Group.

135. The Application provides adequate geologic and hydrologic information.

136. The Twin Mountains Formation of the Cretaceous System is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.

137. Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in

terms of regional production, are not know to yield significant quantities of potable groundwater.

138. The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources." 30 TEX. ADMIN. CODE § 330.56(d)(4).

139. *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.

140. *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in Aquifers of Texas are normally considered the "regional aquifers" of Texas.

141. The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

142. The Applicant developed a boring and sampling plan in conjunction with the TCEQ. The plan for this facility was approved by letter dated March 8, 2004.

143. The plan called for 26 bore holes at various points throughout the tract. The Applicant reasonably relied on the Executive Director's approval of the boring plan.

144. The drilling was contracted out to Stefan Stamoulis, under the direction of Michael Snyder and Greg Adams. Mr. Stamoulis is himself a registered geologist and a very experienced professional.

145. During the drilling phase of the investigation Mr. Adams was in contact with Mr. Stamoulis roughly two days per week while Mr. Snyder talked to Mr. Stamoulis every single day, and on many occasions several times per day.

146. Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken. .

147. On occasion wash borings were taken. This was done when the team was confident the drill was in a particular layer where the sediment was consistent. The driller would make a request to Mr. Snyder, who would look at his existing correlations and if appropriate, give the approval. An experienced driller can generally tell when a different material is encountered while drilling.

148. Even when taking wash borings the driller would stop every few feet and bring up the sample for a visual inspection. If any change was noticed, either by visual inspection or during drilling, the core barrel would be reinstalled and core sampling would begin again.

149. The data produced by the subsurface investigation supports the Applicant's delineation of Stratums I, II and II described above.

Regional Aquifers (includes Site Specific Geology and Subsurface Investigation)

150. The Trinity Aquifer's Twin Mountains Formation of the Cretaceous System is the regional aquifer and is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.

151. Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not know to yield significant quantities of potable groundwater.

152. The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources."

153. *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.

154. *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in Aquifers of Texas are normally considered the "regional aquifers" of Texas.

155. The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

156. The Applicant developed a boring and sampling plan in conjunction with the TCEQ. The plan for this facility was approved by letter dated March 8, 2004.

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159. During the drilling phase of the investigation Mr. Adams was in contact with Mr. Stamoulis roughly two days per week while Mr. Snyder talked to Mr. Stamoulis every single day, and on many occasions several times per day.

160. Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken.

161. On occasion wash borings were taken. This was done when the team was confident the drill was in a particular layer where the sediment was consistent. The driller would make a

request to Mr. Snyder, who would look at his existing correlations and if appropriate, give the approval. An experienced driller can generally tell when a different material is encountered while drilling.

162. Even when taking wash borings the driller would stop every few feet and bring up the sample for a visual inspection. If any change was noticed, either by visual inspection or during drilling, the core barrel would be reinstalled and core sampling would begin again.

163. The data produced by the subsurface investigation supports the Applicant's delineation of Stratums I, II and II described above. The Application provides adequate geologic and hydrologic information, including properly identifying the lowermost aquifer capable of producing usable groundwater pursuant to the applicable TCEQ regulations.

164. Applicant's boring plan included 26 bore holes at various points throughout the proposed permit site.

165. Approximately 80% of the borings produced undisturbed core samples.

166. Applicant used wash borings in particular holes after it had determined sediment was consistent in the area.

167. Applicant classified the soils according to the Unified Soil Classification System to aid in the evaluation of the engineering properties of the soils.

168. Applicant performed physical property testing to determine the parameters used in the slope stability, settlement, and heave analyses.

169. Applicant tested the site's physical properties to determine the parameters used in the dewatering system design and to evaluate the onsite material for use as compacted clay liner.

170. The Application includes the required information on soils.

171. No wetlands are present in the landfill area.

172. Applicant conducted a fault study by reviewing aerial photographs of the site, reviewing available geologic literature and maps of the area, conducting site reconnaissance, and examining the subsurface boring data.

173. There was no evidence of surface faulting in the area or any lineament crossing the site.

174. There is no active faulting within 200 feet of the site.

Slope Stability

175. Greg Adams, P.E. prepared the sections of the Application and testified about slope stability in his prefiled testimony and in live testimony during the hearing. Mr. Adams has personally performed slope stability analyses at approximately 25 landfills and has never experienced a failure.

176. The excavation slopes were analyzed for both short-term and long-term conditions by circular failure surfaces. The waste slope was analyzed for long-term conditions by random failure surfaces.

177. Part III, Attachment 4, Appendix 4G contains the slope stability analyses performed to predict the stability of the excavation slope, waste slope, and the sideslope liner and the final cover systems. The proposed slopes will be stable under the conditions analyzed.

178. Slope stability calculations were performed to evaluate the stability of the sideslope liner and final cover systems.

179. Soil parameters were selected based on a review of boring logs, laboratory test results, and on engineering judgment and experience with similar materials.

180. The geotechnical evaluation was adequate to ensure the stability of slopes and materials used for sidewalls.

181. The Applicant assumed even lower than average strength values for slopes.

182. Even if the landfill were located in the Pennsylvanian formation, the slope stability analyses would not change.

Land Use Issues

183. The Application included a legal description and surveys of the approximately 652-acre tract of land Applicant owns and upon which it would construct the landfill, the driveway easement, and a Property Owner Affidavit stating that IESI is the owner of the property.

184. The Application included adequate proof of property interests.

185. The Application properly identified the approximately 25 residences within one mile of the proposed landfill site.

186. The land use of the surrounding area is primarily agriculture pasture-land, with some oil and gas development and rural residents.

187. There are no schools, licensed day-care facilities, churches, cemeteries, or recreational areas within one mile of the proposed site.

188. There are no airports or significant business operations nearby.

189. The location does not raise any significant archeological concerns.

190. An unpaved public road, two industrial/commercial facilities, a greenhouse complex, and a new recreational vehicle park are within one mile of the proposed permit boundary.

191. The roads leading to the landfill are adequate without any need for improvement (other than the driveway entrance itself).

192. There are no zoning restrictions or any land-use variances needed for the operation of the landfill.

193. The recorded oil and gas wells within one mile of the site are shown in the Application.

194. No oil and gas wells would be allowed on the landfill.

195. The Application identifies the two unused water wells within the permit boundary. As shown by those maps, there are no other water wells identified within 500 feet of the proposed site.

196. The Application further identifies all the wells located within 1 mile of the permit boundary.

197. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.

198. The depth and geology of the Barnett Shale and overlying formations are such that there will be no impact on the Jacksboro landfill.

199. The Application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules.

200. The Application properly identified one church that is 1.5 miles from the proposed landfill site.

201. The location chosen for the proposed landfill is compatible with surrounding land uses and residential growth trends.

Wells and Springs

202. The Application identified five water wells within one mile of the permit boundary, two of which are within the permit boundary and not used.

203. Applicant identified 25 residences within one mile of the facility.

204. The Application identifies the two unused water wells within the permit boundary. As shown by those maps, there are no other water wells identified within 500 feet of the proposed site.

205. The Application further identifies all the wells located within 1 mile of the permit boundary.

206. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.

207. The Application adequately identifies and evaluates all springs and water wells.

Usable Aquifer

208. The Twin Mountains Formation of the Cretaceous System is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.

209. Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not know to yield significant quantities of potable groundwater.

210. The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources." 30 TEX. ADMIN. CODE § 330.56(d)(4).

211. *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.

212. *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in Aquifers of Texas are normally considered the "regional aquifers" of Texas.

213. The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

214. Applicant has agreed to adhere to Special Provision added to the permit requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

Site Operating Plan

215. The Site Operating Plan (SOP) contains a Fire Protection Plan, which includes Fire Prevention Procedures, General Rules for Fires, Specific Fire-Fighting Procedures, Fire Protection Training, and the TCEQ Notification process.

216. The Jacksboro Fire Department would be charged with responding to fire emergencies at the landfill.

217. The Jacksboro Fire Department has adequate personnel and equipment for fire emergencies.

218. The fire procedures implemented as part of the SOP are in compliance with the TCEQ's published guidance on how to draft SOPs.

219. The SOP contains provisions including prohibiting the open burning of waste, daily covering of newly deposited landfill waste, controlling ponded water, the proper management of leachate and contaminated water, and the use of all-weather roads.

220. The Site Layout Plan calls for a minimum buffer distance of 200 feet between the disposal footprint and the permit boundary. This distance provides ample room for fire-fighting vehicles.

221. The Site Operating Plan provides adequate controls for fire protection.

Odors, Dust, and Air Criteria (includes landfill gas management)

222. The SOP sections on air criteria, odors, and dust comply with the applicable TCEQ regulations and are adequate to protect against these conditions.

223. The Landfill Gas Management Plan (LGMP) includes specific monitoring and maintenance procedures and shows the quarterly reporting forms required for the probes and facility structures.

224. The LGMP accounts for and describes response measures and a remediation plan in the event concentrations of methane exceed regulatory limits either within facility structures or at the permit boundary.

225. The design includes a landfill gas venting system as part of the final cover system to prevent excessive pressures from developing under the geomembrane cap.

226. The SOP provides adequate controls for landfill gas.

Vectors and Scavenging

227. The SOP describes measures that would be taken to control vectors such as daily, intermediate, and final cover and compaction, as well as more specific measures such as pesticides.

228. Human salvaging and animal scavenging would not be permitted.

229. The SOP adequately addresses the prevention and response to salvaging and scavenging.

230. The SOP provides adequate controls for vectors, salvaging and scavenging.

231. While feral hogs reside in Jack County, as well as in most of Texas, there is no evidence that they have entered any landfill facility.

232. Vectors, including wild feral hogs, will not be allowed to negatively affect the Jacksboro Landfill.

Windblown Waste

233. The SOP describes the measures that would be taken to control windblown waste, such as requiring adequate covers on waste transportation vehicles; limiting the size of the active working face; applying daily cover as frequently as needed; erection of litter control fences,; collection of windblown waste; and the utilization of earth berms as needed.

234. The SOP provides adequate controls for windblown waste.

235. The IESI property is approximately 652 acres which is significantly larger than the permit boundary itself.

Screening of Prohibited Wastes

236. The SOP outlined in the Application includes a screening program for the detection and prevention of the disposal of prohibited wastes.

237. All incoming loads would be visually monitored at the gatehouse and working face.

238. Site personnel would be properly trained to identify any prohibited wastes, and to perform random inspections and know what to do in the event prohibited wastes are identified.

239. Detection of a prohibited waste would trigger an investigation and appropriate measures.

240. The SOP requires the maintenance of records of load inspection reports and regulated hazardous or PCB waste notifications.

241. Prohibited wastes would be properly segregated, protected against the elements, secured against unauthorized removal, isolated from other waste and activities, and returned to the hauler for proper disposition.

242. The SOP provides adequate controls for screening of prohibited wastes.

Ponded Water

243. The SOP includes procedures for dealing with ponded water, including requiring any ponded water to be removed and the depressions filled as quickly as possible, but no later than seven days after ponding.

244. Because of the site grading and maintenance, ponded water would be minimal.

245. The SOP provides adequate controls for ponded water.

Site Access

246. The SOP would provide adequate controls for site access.

247. The only access point through the perimeter fence would be a gated entrance to the main property, and a gate attendant at the permit boundary.

248. Entry to the active portion of the site would be restricted to designated personnel, approved waste haulers, and properly identified persons whose entry is authorized by site management.

Employee Training

249. The SOP includes provisions related to training employees, including training for record keeping, license requirements, detection, prevention of disposal of prohibited wastes, fire protection and response, site inspection, site safety, site access, and maintenance.

250. The landfill personnel would receive training through a combination of classroom instruction and on-the-job training in procedures relevant to the position for which they are employed.

251. The landfill would have a program for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous and PCB wastes.

252. Site personnel would receive site-specific safety training.

253. In order to enhance site safety, access to the active areas would be limited to authorized personnel and equipment would be kept well-maintained.

254. The SOP would adequately provide for training of employees and guide the facility's day-to-day operations.

255. The Site Operating Plan also sets forth the various positions at the landfill, and the duties of those employees in running the facility on a day-to-day basis.

Health of Protestants and their Families

256. TCEQ regulations at 30 TEX. ADMIN. CODE Chapter 330 as applicable to this permit application are designed to ensure that a Type I municipal solid waste landfill is protective of public health.

257. The Jacksboro Landfill has been designed and will be operated in compliance with applicable provisions of 30 TEX. ADMIN. CODE Chapter 330 and other applicable TCEQ regulations.

258. The landfill, as designed in compliance with the applicable TCEQ regulations, will be protective of the environment and the health of citizens both from a land-use and a groundwater perspective.

259. The Application demonstrates that the operation of the Jacksboro Landfill will not adversely affect the health of the Protestants and their families.

Buffer Zones

260. The landfill design shows the buffer zone from the disposal footprint to the permit boundary to be a minimum distance of 200 feet, which exceeds the TCEQ's applicable regulation requiring a 50-foot buffer.

261. The buffer zones and screening proposed in the Application would be adequate.

262. The draft permit requires the Applicant to operate not only in compliance with the Site Operating Plan generally, but includes a specific provision stating that the Jacksboro Landfill must be managed so as to protect human health and the environment.

263. The extended buffer proposed by the Applicant not only better protects the nearby residents from nuisance conditions, it also provides for easier access for fire-fighting and other emergency vehicles.

264. The proposal landfill site consists of approximately 652 acres which allows for superior screening of the landfill operations from public view.

265. The landfill disposal footprint is located approximately 1.29 miles from the nearest paved road.

266. The permit boundary is set back 832 feet from the western property boundary and 2655 feet from the northern boundary in some places.

Nuisance Conditions

267. The site would have an entrance gate, and appropriate traffic control signs to direct and control traffic.

268. Applicant plans to confine the unloading areas to a minimum size.

269. The SOP has measures to control odors such as prompt landfilling of waste, daily covering of freshly landfilled waste, controlling ponded water, and the proper management of leachate and contaminated water.

270. There would be all-weather access maintenance of all roads, including internal roads, in a reasonably dust-free and liter free condition.

271. The SOP includes provisions for the use of the existing topography and vegetation as site buffers to screen the waste.

272. The SOP provides for a perimeter fence. Portions of the west and north permit boundaries may be secured by natural barriers. A fence will also be located on both sides of the entrance road. The fencing will be barbed wire, woven wire, wooden fencing, plastic fencing, pipe fencing, or other suitable material

273. The SOP includes measures to control windblown wastes and litter in compliance with 30 TEX. ADMIN. CODE § 330.120.

274. The Site Operating Plan has restrictions to prohibit waste unloading, storage, disposal, or processing within any buffer zone.

275. The buffer zone will be 200 feet minimum, which exceeds the TCEQ requirement found in 30 TEX. ADMIN. CODE § 330.121.

276. The Site Operating Plan has measures to control odors such as prompt landfilling of waste, daily covering of freshly landfilled waste, controlling ponded water, and the proper management of leachate and contaminated water in compliance with 30 TEX. ADMIN. CODE § 330.125.

277. The Site Operating Plan includes provisions designed for control of disease vectors in compliance with 30 TEX. ADMIN. CODE § 330.126.

278. There are measures to prevent human salvaging and scavenging in compliance with 30 TEX. ADMIN. CODE § 330.128.

279. There will be control and monitoring of landfill gas will be in accordance with the Landfill Gas Management Plan in compliance with 30 TEX. ADMIN. CODE §§ 330.56(n) and 330.130.

280. There will be use of a landfill compactor in accordance with § 330.132; daily cover, intermediate cover, and final cover; site grading and maintenance to minimize ponded water, and removal of ponded water as needed, but in any event within 7 days in compliance with complies with 30 TEX. ADMIN. CODE § 330.134.

281. The Site Operating Plan includes provisions for the use of the existing topography and vegetation, site buffers to screen the waste is in compliance with 30 TEX. ADMIN. CODE § 330.138.

282. The Site Operating Plan includes provisions for the control of leachate and contaminated water and conducting regular inspections and maintenance in accordance with a schedule.

283. The Site Operating Plan provisions fulfill the TCEQ's requirements and are adequate to control nuisance conditions.

284. The Application demonstrates that the proposed permit is adequately protective to prevent nuisance conditions.

Transportation

285. The Application discusses the availability and adequacy of the roads, the volume of vehicular traffic on the access roads, the volume of vehicular traffic generated by the facility, and the proposed entrance road plan.

286. The Application discusses the driveway permit that would be issued by the Texas Department of Public Safety if the Application is approved.

287. The Application includes adequate transportation information.

288. Regional Coordination

289. The Nortex Regional Planning Commission has determined that the proposed landfill is compatible with the local Regional Solid Waste Management Plan.

290. The proposed landfill is compatible with the Regional Solid Waste Management Plan.

Endangered and Threatened Species

291. Applicant provided the relevant technical data, a mitigation plan, and correspondence with the appropriate state and federal agencies regarding endangered and threatened species.

292. While no threatened or endangered species were observed at the proposed landfill site, because some areas of the landfill could serve as habitat for the Texas horned lizard and the timber rattlesnake, a proactive mitigation plan was developed.

293. The mitigation plan includes appropriate steps to be taken during both during construction and operation of the landfill to protect those species and to relocate the species if an animal is found.

294. Applicant adequately evaluated the presence of and potential for adverse effects of the landfill on endangered and threatened species.

295. The Application included the required correspondence between Mr. Marusak and the Texas Parks and Wildlife Department, the United States Army Corp of Engineers, and the United States Fish and Wildlife Service.

296. It also included the Section 404 Nationwide Permit Application and Authorizations addressing threatened and endangered species.

Compliance History

297. Applicant owns and operates multiple waste facilities of various types throughout Texas.

298. Applicant's compliance history reflects an overall "average" classification.

299. The Applicant's compliance history warrants the granting of the permit.

Closure and Post Closure Plans

300. The Application contains evidence of financial responsibility.

301. The financial assurance would be by surety bond to be filed upon issuance of the MSW permit to IESI.

302. The closure and post-closure plans are set out in the Application.

303. IESI has agreed to provide financial assurance pursuant to the financial assurance schedule found in the Application, at Part III, Attachment 8 – Cost Estimates for Closure and Post-Closure care. (App. Ex. 100, Vol. 1, Part I, App. IE.)

304. Applicant adequately provided for closure and post closure plans and proposed adequate financial assurance.

Permit Term

305. Ms. Teresa McCaine, testifying on behalf of the Executive Director of the TCEQ, confirmed that the Executive Director does not deem it appropriate for the term of the permit to be anything other than the life of the facility.

306. The Applicant has demonstrated that the permit term should be for the life of the facility.

307. There was no evidence that, if the Application were granted, the permit's term should be other than for the life of the facility.

Transcript Costs

308. All parties had a role in initiating the hearing.

309. A transcript was required because of the length of the hearing.

310. All parties participated substantially in the proceedings and benefitted from having a transcript for use in preparing their briefs.

311. The transcript costs should be assessed 50% to Applicant, 25% to Protestant, and 25% to the City.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the disposal of MSW and the authority to consider this permit under TEX. HEALTH & SAFETY CODE ANN. § 361.061.

2. Notice was provided in accordance with TEX. HEALTH & SAFETY CODE ANN. § 361.0665, 30 TEX. ADMIN. CODE §§ 39.5, 39.101, and 39.501(c) and TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision. TEX. GOV'T CODE ANN. § 2003.047.

4. The provisions of 30 TEX. ADMIN. CODE ANN CH. 330 in effect as of March 22, 2006 apply to the application.

5. The application was processed and the proceedings described in this Order were conducted in accordance with applicable law and rules of the TCEQ, specifically 30 TEX. ADMIN. CODE ANN. § 80.1 *et seq.*, and the State Office of Administrative Hearings, specifically 1 TEX. ADMIN. CODE. ANN. § 155.1 *et seq.*, and Subchapter C of TEX. HEALTH & SAFETY CODE ANN. Chapter 361.

6. The burden of proof was on the Applicant, in accordance with 30 TEX. ADMIN. CODE ANN § 80.17(a).

7. The evidence in the record is sufficient to meet the requirements of applicable law for issuance of the Draft Permit, including TEX. HEALTH & SAFETY CODE ANN. Chapter 361 and 30 TEX. ADMIN. CODE. ANN. Chapter 330.

8. If constructed and operated in accordance with the Solid Waste Disposal Act, 30 TEX. ADMIN. CODE ANN. Chapter 330, the attached Draft Permit, the facility will not adversely affect public health or welfare or the environment.

9. Section 363.066 of the TEX. HEALTH & SAFETY CODE ANN. does not affect the Solid Waste Disposal Act, under which the Commission may supersede any authority granted to or exercised by the council of governments.

10. The contents of the permit to be issued to the facility meet the requirements of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. §§ 361.086(b) and 361.087.

11. Applicant has submitted documentation of compliance with the NPDES program under the federal Clean Water Act Section 402, as amended, as required by 30 TEX. ADMIN. CODE ANN. § 330.51(b)(5).

12. As required by 30 TEX. ADMIN. CODE ann. §§ 330.61(k)(3), 330.61(i)(4), and 330.61(i)(5) Applicant has submitted documentation of coordination with TCEQ for compliance with the federal Clean Water Act Section 402, the Federal Aviation Administration for compliance with airport location restricts, and the Texas Department of Transportation for traffic and location restrictions.

13. Applicant has submitted wetland determinations required by applicable federal, state, and local laws as required by 30 TEX. ADMIN. CODE ANN. §§ 330.61(m).

14. The proposed landfill is not located in a wetland or an area with faults and fractures and fulfills the requirements of the applicable TCEQ Rules, including: 30 TEX. ADMIN. CODE § 330.53(b)(12)(B) and § 330.302 in regards to wetlands; 30 TEX. ADMIN. CODE § 330.303 and § 330.53(b)(10)(B) and § 330.204 in regards to faults; 30 TEX. ADMIN. CODE § 303.304 in regards to seismic activity; and 30 TEX. ADMIN. CODE § 330.305 in regards to unstable areas.

15. The application conforms to the applicable requirements of the Engineering Practice Act, TEX. REV. CIV. STAT. ANN. art. 3271a, as provided in 30 TEX. ADMIN. CODE ANN. § 330.57(f).

16. The application meets the technical requirements of 30 TEX. ADMIN. CODE ANN. §§ 305.45, 330.57(c)(1) and (3), 330.57(c)(2), 330.61 330.63 and 330.59, and the Site Development Plan meets the requirements of 30 Tex. ADMIN, CODE ANN. §§ 330.63 and 330.61.

17. Part IV of the application, the SOP, meets the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.57(c)(4) and 330.127.

18. Applicant has shown that it will comply with the operational prohibitions and requirements in 30 TEX. ADMIN. CODE ANN. §§ 330.5, 330.111 - 330.139.

19. The application includes adequate provisions to prevent the ponding of water over waste in the landfill, in compliance with 30 TEX. ADMIN. CODE ANN. § 330.167 and 330.134.

20. The groundwater sampling and analysis plan meets the requirements set forth in 30 TEx. ADMIN. CODE ANN. §§ 330.56(k) and 330.63(f), and Subchapter J of Chapter 330.

21. Applicant has demonstrated that existing drainage patterns will not be adversely altered as a result of the proposed landfill development, as required by 30 TEX. ADMIN. CODE ANN. § 330.63(c)(D)(iii) and 330.305.

22. Applicant's application complies with Tex. Health and Safety Code §§ 361.066 and 361.068, and demonstrates that it will comply with all relevant aspects of the application and design requirements as provided in 30 Tex. Admin. Code Ann. §§ 330.71(a) and 330.57(d).

23. The landfill gas monitoring system complies with 30 TEX. ADMIN. CODE ANN. § 330.159.

24. Applicant has demonstrated compliance with applicable TPDES storm water permitting requirements.

25. Applicant has demonstrated compliance with the location restrictions set forth in 30 Tex. ADMIN. CODE ANN. §§ 330.345, 330.347, 330.553, 330.555, 330.557, and 330.559.

26. Applicant has submitted information regarding closure and post-closure and proposed adequate financial assurance that demonstrates compliance with the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.63(h), (i), 330.457, 330.461, 330.463, 330.465, 330.52(b)(11), 330.280-.284, 330.56(h), 330.56(l), 330.253 , 330.56(m), and 330.254-.256.

27. The Soil and Liner Quality Control Plan complies with 30 TEX. ADMIN. CODE ANN. §§ 330.63(d)(C)(3) and (4)(G), and 330.339.

28. Applicant is not proposing to site a new MSW landfill within five miles of an airport serving turbojet or piston-type aircraft, as confirmed in correspondence with the Federal Aviation Administration and in compliance with 30 TEx. ADMIN. CODE ANN. §§ 330.61(i)(5) and 330.545 and 330.130 in regards to providing adequate controls for landfill gas.

29. As required by TEX. HEALTH & SAFETY CODE ANN. § 361.069, the facility is compatible with surrounding land uses.

30. The facility is compatible with the applicable regional solid waste management plan, pursuant to TEX. HEALTH & SAFETY CODE ANN. § 361.062.

31. The methods specified in the SOP comply with the MSW rules to prevent the creation of any nuisance, as defined by 30 TEX. ADMIN. CODE ANN. § 330.3(95).

32. The buffer zones established by Applicant between the edge of fill and the facility boundary and the proposed screening are compliant with the MSW rules, including 30 TEX. ADMIN. CODE ANN. §§ 330.141(b), 330.121 and 330.138.

33. Applicant has provided sufficiently detailed information regarding the operational methods to be utilized at the facility when using daily cover and its preventative effect on vectors, fires, odors, windblown waste and litter, and scavenging, as required by 30 TEX. ADMIN. CODE ANN. § 330.165(a) and (b), 330.115.

34. The Site Operating Plan provides adequate controls for dust and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125, .127 in regards to providing adequate controls for dust.

35. The Site Operating Plan provides adequate controls for vectors and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.126 in regards to providing adequate controls for vectors.

36. The Site Operating Plan provides adequate controls for scavenging and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.128 in regards to providing adequate controls for scavenging.

37. The Site Operating Plan provides adequate controls for screening of prohibited waste and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.175 in regards to providing adequate screening of prohibited waste.

38. The Site Operating Plan provides for adequate controls for site access and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.116 in regards to providing adequate controls for site access.

39. The Site Operating Plan is adequate in regards to adequately training employees fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE §§ 330.114(1); 330.114(5)(C); 330.114(6) and § 335.586.

40. The Site Operating Plan provides an adequate guide for the operations of day-to-day operations of the facility and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.111 in regards to providing an adequate guide for the operations of day-to-day operations of the facility.

41. The Site Operating Plan provides adequate controls for air criteria and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125 in regards to providing adequate controls for air criteria.

42. The Site Operating Plan provides adequate controls for odors and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125 in regards to providing adequate controls for odors.

43. The methods specified in the SOP for the control of windblown waste and litter comply with the MSW rules, including 30 TEX. ADMIN. CODE ANN. §§ 330.127, 330.139, and 330.120.

44. Applicant has provided adequate information related to transportation in compliance with 30 TEX. ADMIN. CODE ANN. § 330.61(i), 330.51(b)(6)(C) and 330.53(b)(9)(A)-(C).

45. The operating hours proposed in the application have been shown to be appropriate.

46. The operation of the landfill will not adversely affect the health of the requestors and the requestors' families and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(8) to not adversely affect the health of the requestors and the requestors' families.

47. The proposed landfill is compatible with surrounding land uses and residential growth trends and the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(7)-(8) regarding the proposed landfill's compatibility with surrounding land uses and residential growth trends.

48. The Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater and fulfills the requirements the applicable TCEQ Rules, including of 30 TEX. ADMIN. CODE § 330.56(e)(2)-(4) and § 330.56(D)(5)(C) regarding the proper evaluation and presentation of information on the vertical and horizontal flow characteristics of groundwater.

49. The proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring and IESI fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(e)(5) and § 330.230-.234 and 330.241 in regards to the proposed groundwater monitoring system.

50. The application will meet the requirements of 30 Tex. Admin. Code Ann. §§ 330.63(b)(4), 330.401, 330.404, 330.405, 330.407, and 330.403.

51. The liner and leachate system are adequate to protect against groundwater contamination and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(f) and (o); § 330.201 and § 330.200, § 330.205 regarding the adequacy of the liner and leachate system to protect against groundwater contamination.

52. The geotechnical evaluation is adequate to ensure the stability of slopes and material used for sidewalls and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(D)(5)(B) in regards to the adequacy of the geotechnical evaluation to ensure the stability of slopes and material used for sidewalls.

53. The landfill application provides adequate geological and hydrological information and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(D)(1)-(4); § 330.53(b)(10)(A) in regards to the adequacy of the geological and hydrological information.

54. The proposed groundwater monitoring system will adequately protect human health and the environment in compliance with 30 Tex. Admin. Code Ann. § 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.

55. The application will comply with Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC 330.4(m) and 330.51(b)(1).

56. Applicant's geology report complies with 30 Tex. Admin. Code Ann. § 330.63(e).

57. The landfill application includes the required information on soils and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(10)(A) in regards to the inclusion of the required information on soils.

58. The Applicant provides adequate information regarding proposed surface water controls, floodplains, drainage route runoff from the facility, and off-site storm water contamination, including Jasper Creek and fulfills the requirements of the applicable TCEQ Rules, including: 30 TEX. ADMIN. CODE § 330.55(b)(1)-(7) in regards to surface water; 30 TEX. ADMIN. CODE § 330.53(b)(11)(B) and § 330.55(b)(5) and § 330.56(F) in regards to drainage; and 30 TEX. ADMIN. CODE § 330.301 and § 330.53(b)(12)(A) in regards to floodplains.

59. The appropriate rainfall data was used in the calculation of surface drainage and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.55(b)(5) in regards to selecting the appropriate rainfall data in the calculation of surface drainage.

60. The Applicant adequately evaluated the presence of and potential for adverse effects of the landfill on endangered or threatened species and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(13) and § 330.302, § 330.51(b)(6)(8), § 330.55(b)(9) in regards to endangered or threatened species.

61. The proposed permit is adequately protective to prevent nuisance conditions and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.127 in regards to the prevention of nuisance conditions.

62. The Applicant's compliance history warrants the granting of the permit and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 60.1-60.3 in regards to its compliance history warranting the granting of the permit.

63. The application includes adequate proof of property interests and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.52(b)(4)(D) and .52(b)(5) in regards to proof of property interests.

64. The application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(8)(E), § 330.52(b)(4)(D) and § 330.52(b)(5) in regards to adequately identifying and evaluating all springs, water wells, oil and gas wells, homes, churches, and other site specific issues which require special consideration under Commission rules.

65. The permit term should be for the life of the facility and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.63 in regards to the permit term being for the life of the facility.

66. Applicant properly describe all groundwater recharge areas within five miles of the site.

67. The application was processed and the proceedings described in this Order were conducted in accordance with applicable law and rules of the TCEQ, specifically 30 TAC § 80.1 *et seq.,* and the SOAH, specifically 1 TAC § 155.1 *et seq.,* and Subchapter. C of the TEX. HEALTH *et.*. SAFETY CODE ANN. Ch. 361.

68. Pursuant to 30 TEX. ADMIN. CODE ANN. §§ 80.23(d)(2), the Executive Director and Office of Public Interest Counsel may not be assessed any portion of the transcript and reporting costs.

69. Transcript costs should be assessed 50% to Applicant, 25% to the City, and 25% to Protestant.

70. Pursuant to the authority of, and in accordance with, applicable laws and regulations, the requested permit should be granted with the modifications described in this Order.

71. The ALJ's recommendation in this matter is based on specified findings of fact found in the record. TEX. GOV'T. code § 2001.141(c).

72. Applicant met its burden with respect to all referred issues.

73. The application will meet all requirements of the Solid Waste Disposal Act, Texas Health and Safety Code Ann. Chapter 361 and 30 TAC Chapter 330.

74. Pursuant to the authority of, and in accordance with applicable laws and regulations, the attached Permit should be granted with the addition of the following provision:

75. Based on all the foregoing Findings of Fact and Conclusions of Law, the TCEQ Permit No. 2332 for a municipal solid waste landfill should be granted, with a Special Provision requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. The Application of IESI TX Landfill L.P. for Permit No. MSW-2332 is granted.

2. Permit No. MSW-2332 will include a Special Provision requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

3. Transcript costs will be paid 50% by Applicant, 25% by the City, and 25% by Protestant.

4. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.

5. All other motions, requests for specific Findings of Fact or Conclusions of Law, and other requests for general and specific relief, if not expressly granted, are denied for want of merit.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.

7. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission